

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 June 2011

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested immigration information regarding individuals who had overstayed their leave in the United Kingdom and matched a certain criteria regarding right to remain and marriage applications. The United Kingdom Border Agency (UKBA) refused to comply with the request on the grounds that the appropriate costs limit would be exceeded. The UKBA's internal review upheld this decision. The Commissioner has investigated and finds that the UKBA was correct to refuse the request under section 12(1) of the Act and that the UKBA discharged its duties under section 16 adequately. He requires no further remedial steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Commissioner notes that under the Act the UKBA is not a public authority itself but an executive agency of the Home Office, which is responsible for the UKBA. Therefore, the public authority in this case is the Home Office rather than the UKBA. However, for the sake of clarity, this Decision Notice refers to the UKBA as if it were the public authority.

3. On 11 March 2010 the complainant contacted the UKBA to request the following information:

"Marm, I request information in relation to how many Ukraine overstayers in the U.K. Since 1999 concealed there [sic] out of time Home Office documentation as being under threat of deportation from British Citizens and married British Citizens in Church to by-pass POA [sic – UKBA took this to mean 'COA' Certificate for Approval for marriage] from the Home Office, then made a further leave Deception application to the Home Office to be considered and then cause domestic violence lets say common assault before the husband British Citizen can work out the deception also, how many cases are there at the Home Office and what action is taken.

Also, Marm, can you inform me how long does the Home Office take to consider FLR(M) [Further Leave to Remain] applications is 20 days, 1 year, 2 years or more and how are the applications checked? How are the British Citizens protected in relation to the FLR(M) application form and by the Home Office."

4. On 12 April 2010 the UKBA responded to the complainant and refused to comply with the first part of the request on the grounds of cost. The UKBA answered the complainant's questions and offered advice regarding the FLR(M) applications. The Commissioner considers that this response was given outside the Act. With regard to the first part of the request, the UKBA stated:

"Your request would at present be too costly to answer because the information to this question would be held on individual case files covering a period of over ten years and is not held centrally..."

5. On 18 May 2010 the complainant requested an internal review of the UKBA's decision to refuse to comply with the request.

6. On 15 July 2010 the UKBA completed the internal review, which upheld the costs refusal. The UKBA confirmed that it had identified 3,218 cases on the Case Information Database (CID) concerning Ukrainian marriages; however, it would not be possible to determine which

applicants had overstayed their leave without the manual examination of each case file.

The Investigation

Scope of the case

7. On 10 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that the UKBA had refused to comply with the request due to the costs it would incur. The complainant was also dissatisfied with the time it had taken the UKBA to respond to his request and carry out the internal review.
8. For the purposes of his investigation, the Commissioner has only considered the UKBA's response to the first part of the request. The UKBA provided detailed information in relation to the second part of the request – concerning FLR(M) applications. It provided details of set service standards the UKBA has for dealing with FLR(M) cases and how they are processed and enforced. The complainant did not raise any concerns regarding this response and the Commissioner considers that the response fell outside the Act.

Chronology

9. On 8 February 2011 the Commissioner wrote to the UKBA asking for a detailed breakdown of the estimated time and cost it would take to provide the information. The Commissioner asked the UKBA to include a description of the type of work involved in complying with the request, to clarify whether a sampling exercise had been undertaken and to confirm that the estimate had been based upon the quickest method of gathering the information.
10. On 11 March 2011 the UKBA responded to the Commissioner. The UKBA explained that the actual information requested by the complainant was a number and that the UKBA does not hold the information as such in that form. However, the UKBA stated that it would be possible to ascertain the number from information it held. The UKBA confirmed that the cost that would be incurred by complying with the request was derived from the activities involved in ascertaining this number and provided further details of the relevant tasks.
11. On 29 March 2011 the Commissioner wrote to the UKBA seeking further clarification regarding the processes it had described in the earlier response concerning locating, retrieving and extracting the relevant

information and the type of information held on the records identified as falling within the scope of the request. The Commissioner also sought further details of any advice and assistance provided to the complainant.

12. On 28 April 2011 the UKBA responded to the Commissioner and provided the clarification sought, for example, further details regarding the case management system and how information could be searched for and possibly located.

Analysis

Substantive Procedural Matters

Section 12 – the cost of compliance exceeds the appropriate limit

13. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
14. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
15. The appropriate limit for central government departments, and therefore the UKBA in this case, is £600 or 24 hours of one member of staff's time.
16. The Regulations allow a public authority to charge for the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
17. In investigating this case, the Commissioner has had to decide whether the estimate put forward by the UKBA, regarding the costs it would incur in complying with the request, is a reasonable one. He is aware that a number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable', which means that it is not sufficient for a public authority to simply assert that the appropriate limit has been met. In *Alasdair Roberts and the Information*

*Commissioner (EA/2008/0050) the Tribunal ruled that any estimate should be "sensible, realistic and supported by cogent evidence". This point echoed that previously made by the Tribunal in *Randall vs The Information Commissioner (EA/2007/0004)* and forms the basis of the Commissioner's investigation.*

18. In its response to the Commissioner's enquiries, the UKBA made the point that the complainant's request had five separate parts to it. The request itself was for a specific number which could be ascertained as the result of locating and extracting information regarding *"Ukrainian overstayers in the UK since 1999 who (a) concealed their out of time Home Office documentation... (b) married British citizens in church to by-pass POA (sic)...(c) then made a further leave of application to the Home Office and (d) then cause domestic violence such as common assault before the husband can work out the deception"*. The UKBA confirmed that it was the task of extracting the information that would take the most time and incur the most cost.

19. The UKBA explained that it had identified 3,218 files concerning Ukrainian nationals on its CID system who had married in the United Kingdom. The UKBA stated that, in relation to complying with the request:

"the first step would be to narrow these down to which applicants had overstayed their leave. As explained in the internal review, that would require the examination of the notes to each individual electronic record...UKBA have estimated that it would take approximately 10 minutes to search each individual CID record, giving a total of 75 working days".

20. The UKBA went on to explain to the Commissioner that narrowing the cases down further to answer the other categories, (a) to (d), of the request would require the *"recall and examination of each paper file relating to any who had been identified as overstayers"*. The UKBA confirmed that although this would be a timely and costly exercise it had not made a specific estimate with regard to this further task owing to the fact that the first element to the request had exceeded the appropriate cost limit.

21. With regard to the tasks involved in complying with the request, the UKBA stressed to the Commissioner that retrieving the paper files would not be difficult or expensive (depending on how many would be involved) but that the cost would be derived from the work involved in examining the files and extracting the information. The UKBA stated that:

"the categories described by [the complainant] are highly specific and it would require very detailed examination of the files to try to find any matching cases (in some cases, of course, it may not be possible from the available information to tell whether, for example, someone had assaulted their spouse)".

22. The UKBA confirmed that a sampling exercise had not been carried out but that the estimate had been based on the quickest method of gathering the information. The UKBA stated that its:

"immigration caseworkers are very familiar with searching CID and we are satisfied that they are able to estimate the time required accurately. Even if their estimate was excessive and searches took, say 5 minutes instead of 10, the estimate would still be significantly over the costs limit..."

23. The Commissioner made further enquiries about what information was held in the form of electronic records and asked for more detail regarding how the files could be searched for the requested information.

24. The UKBA responded to the Commissioner with further details of the CID system. The UKBA altered its position regarding the electronic records held on the CID system, stating that it now understood that:

"it is possible to identify overstayers from CID...when the team were originally approached about [the] request, they did not know that it was possible to report on overstayers from CID and therefore reported on the number of marriage applications as an alternative".

25. The UKBA went on to explain that the CID

"team now has staff who have specific knowledge of the enforcement procedures and the required technical skills to retrieve data from CID about overstayers. They have identified that the number of Ukrainian overstayers [for the period of the request] was 1,286 individuals..."

26. With regard to the other elements to the complainant's request, the UKBA explained that ascertaining this information would still involve the tasks previously described to the Commissioner, stating that:

"any further information on those who had made such applications would then need to be obtained by examining individual records, as was explained in the original UKBA response and subsequent correspondence..."

27. The Commissioner appreciates that the UKBA did make further enquiries as a result of his investigation regarding its CID system and therefore was able to obtain a proportion of the information pertaining to the

request, ie. the number of Ukrainian overstayers. However, he recognises that this information alone would not fully answer the request.

28. The Commissioner understands that the original estimate given by the UKBA related to locating and extracting information held as electronic records on the CID system and that this has now been revised due to the increased technical knowledge of immigration staff. However, he has gone on to consider the tasks described by the UKBA involved in locating and extracting the detailed requested information from the voluminous paper files and accepts that the work involved in relation to parts (a) to (d) of the request concerning the 1,286 paper files identified on the CID system would engage the costs limit.

Section 16 – Duty to provide advice and assistance

29. Section 16(1) of the Act places a duty on a public authority to provide advice and assistance, where reasonable, to those making or intending to make a request for information. In relation to requests which engage section 12, the Commissioner usually expects a public authority to offer advice and assistance regarding refining the request to attempt to bring it under the costs limit.
30. The Commissioner therefore sought clarification regarding what, if any, advice and assistance the UKBA had offered the complainant with regards to refining his request in order that compliance under the costs limit may be possible.
31. In response, the UKBA offered details of the background to the request in this case, namely that the complainant had been requesting information of a similar nature over a period of years. The UKBA made the point that any advice and assistance given to the complainant should be aggregated over the total period of time it had been dealing with the large number of his related enquiries and requests.
32. The UKBA provided the Commissioner with copies of emails showing correspondence sent by the UKBA (pre-dating the request in this case) to the complainant in an effort to clarify his previous requests for similar information and offer advice as to why the costs limit would be engaged. In this case, although the Commissioner saw no active examples of how the complainant could refine his request provided by the UKBA in the refusal notice or internal review, he accepts that it had engaged with the complainant on a number of occasions to try to clarify and refine overall what type of information he was seeking.
33. When asked about its failure to provide definite examples of how the request in this case could be refined, the UKBA explained to the Commissioner that it had struggled to do so owing to the fact that the

purpose behind the complainant's request was unclear and so it would be possible for the UKBA to easily scope out of the request information in which the complainant was interested. The UKBA also stated with regard to the requested information that:

"the information would be a number, most likely a very small number. The timeframe would have to be narrowed considerably in order to bring the number of electronic records within the costs limit. That would reduce the already small possibility of finding any matching cases and it is difficult to see how this would help..."

34. The Commissioner understands that the circumstances described in the complainant's request (and therefore the information he is interested in obtaining) are very specific and are already narrow in scope. As the UKBA explained, narrowing the time frame of the request would be one way of bringing it within the costs limit; however, the Commissioner agrees that this would drastically reduce the chances that any information pertaining to the request would be located.
35. The Commissioner considers that, taking into account the specific circumstances of the request in the case, the advice and assistance previously provided to the complainant regarding related information requests was of an adequate nature to fulfil the UKBA's duties under section 16 of the Act.

The Decision

36. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

37. The Commissioner requires no steps to be taken.

Other matters

38. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', the Commissioner

considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took the UKBA 40 working days to complete the internal review, despite the lack of exceptional circumstances in the case and the publication of his guidance on the matter.

Right of Appeal

39. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

40. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 9th day of June 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."