

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2013

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

Decision (including any steps ordered)

1. The complainant has requested information regarding the refund of travel costs whilst on temporary admission to the UK.
2. The Commissioner's decision is that the Home Office was correct to state that it did not hold any further recorded information in relation to part of the request.
3. The Commissioner does not require the Home Office to take any further steps.

Request and response

4. On 2 February 2013, the complainant wrote to the UK Border Agency (UKBA), which is part of the Home Office (HO), and requested information in the following terms:

"How would a person subject to a reporting event receive a payment for the refund of the travel costs incurred when attending a reporting event as a condition of 'bail' whilst on an IS96 document (Temporary Admission).

If there are any forms (X) which need completing to apply for a refund or to claim travel expenses ETC please provide a copy of such forms along with your response.

Please also provide a copy of all guidance issued to UKBA/other relevant persons in relation to funding such claims for travel expenses.

If guidance is available for completing (X) then please also provide a copy of this guidance."

5. The UKBA responded on 7 February 2013. It stated that it was applying section 21 (information accessible by other means) and provided a link. The complainant requested an internal review.
6. The HO carried out the internal review and wrote to the complainant on 27 March 2013. It stated that in relation to the first question it was still applying section 21.
7. With regard to question 2, the HO split it into two parts. "*If there are any forms (X) which need completing to apply for a refund*" it referred to as question 2a, and "*/[to] claim travel expenses*" it referred to as question 2b. The HO stated that it did not hold the requested information in relation to question 2a and in relation to question 2b it disclosed a relevant form. It also stated that there was a breach of section 1(1)(a) of the FOIA as it had not stated this in its response of 7 February 2013.
8. With regard to question 3, the HO explained that as the request was for all guidance to the UKBA staff regarding the funding of travel expenses, this could be interpreted in different ways. The HO explained that given the context of the other questions, it had interpreted it as the complainant asking how these travel expenses were paid.
9. With regard to question 4, the HO explained that this was a request for any guidance used in completing the forms referred to in question 2. The HO explained that as there were no forms held in relation to question 2a, question 4 related to guidance in completing the travel expense form disclosed in response to question 2b.
10. The HO explained that as guidance on this would be used by the Travel Expenses Office who completed the forms for the subject to then sign, the guidance would be directed to the Travel Expenses Officer (TEO), a UKBA member of staff. It went on to explain what areas a TEO might need guidance on and provided information about these areas.
11. The HO concluded that it was applying section 21 to questions 1, 3 and 4 and acknowledged that it should have provided more detailed advice and assistance under section 16, to assist the complainant in finding the information more readily. However, it provided more advice and assistance as part of the internal review.

12. The HO also acknowledged that in relation to question 2a it should have informed the applicant that the information was not held in its initial response. It also acknowledged that in relation to 2b, it should have provided the appropriate form to the complainant but was doing so as part of its internal review.

Scope of the case

13. The complainant contacted the Commissioner on 29 April 2013 to complain about the way in which the UKBA handled his request of 2 February 2013. He explained that he had found a form – S69 travel form – which he considered should have been disclosed to him as part of his request. The complainant also confirmed that he was complaining about the lateness of the UKBA's internal review.
14. Given that the complainant did not complain about the application of section 21, the Commissioner will not be considering the application of this exemption any further.
15. The Commissioner has addressed whether the HO was correct to state that it did not hold any further information in relation to question 2a in its internal review and the time taken to deal with this request. He will also consider whether the S69 form should have been disclosed to the complaint in response to his request.

Reasons for decision

16. Section 1(1) of FOIA states 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."

17. The Commissioner has to determine whether, on the balance of probabilities, the HO holds any relevant recorded information in relation to question 2a, which it has not disclosed to the complainant.

18. The Commissioner wrote to the HO asking it a number of questions regarding whether it held any recorded information relevant to 2a and it responded as follows.

What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

If searches included electronic data, which search terms were used?

If the information were held would it be held as manual or electronic records?

HO's response: The internal and external guidance within the Enforcement Instructions and Guidance documents were reviewed as these documents contain the complete national guidance issued to staff and cover travel expense applications. The documents were reviewed manually. The Enforcement Instructions and Guidance is available in a published version for the public on the former UKBA website (to which [the complainant] was directed). An internal version for staff is available on the Home Office intranet. The Home Office confirms that the internal version has no additional information in scope of [the complainant's] request.

The travel expenses request form, provided in the Internal Review to the complainant, is a standard document available to staff at reporting centres via the Home Office intranet.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

HO's response: No – the information has been provided.

19. Having considered the HO's responses the Commissioner is satisfied that, on the balance of probabilities, the HO does not hold any recorded information in relation to question 2a.
20. The Commissioner went on to consider whether the document provided to him by the complainant – Application for S69 Support (Travel Expenses) Exceptional Needs form – should have been disclosed to him in response to his request.

21. The Commissioner asked the HO if it had considered whether this form was within scope of the complainant's request. The HO explained that this form was not considered to be in scope of the complainant's request; the complainant had asked about travel expenses for attending a reporting event and not for exceptional needs forms which can be given to people who are refused travel expenses because they do not meet the eligibility criteria.
22. Having considered the request and the HO's explanation about the form, the Commissioner is satisfied that the form does not fall within scope of this request as it was not concerned with travel expenses for attending a reporting event. He also notes that the complainant has a copy of the form in question.
23. The Commissioner went on to consider whether the HO had breached section 1(1)(a) of the FOIA, by not explaining that it did not hold any information in response to question 2a until the internal review; and in relation to 2b, by providing the appropriate form as part of its internal review.
24. The Commissioner considers that public authorities can use internal reviews to reconsider their original position and that this does not breach the FOIA. In support of this view, he notes the comments of the First-tier Tribunal (the tribunal) in *McIntyre v the Information Commissioner and the Ministry of Defence* (EA/2007/0068). This case was considered under the FOIA and regarding internal reviews, the tribunal stated:

"... the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made"
25. Therefore, the Commissioner considers that the HO did not breach section 1(1)(a) of the FOIA, as it had rectified its initial errors in the internal review, including providing more advice and assistance under section 16.

Other matters

26. The complainant complained about the length of time taken to carry out his internal review. The complainant requested the internal review on 7 February 2013 and the HO responded on 27 March 2013.
27. Part VI of the section 45 Code of Practice makes it good practice for a public authority to 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.
28. As he has made clear in his '*Good Practice Guidance No 5*', the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, 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.
29. The Commissioner notes that the HO took longer than 20 working days to carry out the internal review. Although he is concerned about this, the Commissioner is also aware that the complainant has made numerous, related requests to the HO about immigration issues.

Right of appeal

30. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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