

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2014

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

Decision (including any steps ordered)

1. The complainant has requested information relating to equality impact assessments and treatment on the basis of nationality.
2. The Commissioner's decision is that the Home Office has applied section 14 appropriately.
3. The Commissioner does not require the Home Office to take any further steps.

Request and response

4. On 8 September 2013, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"Considering the very clear guidance given in the case of Bassey (<http://www.bailii.org/cgi-bin/markup.cgi...>) particularly the points at [24] and [34].

Taking into account the case of Zambrano (Case C-34/09) relied heavily (and in fact Para [41] (Zambrano) applied) the ruling in the case of Chen, the same principles as outlined in the case of Bassey would apply to the parents of a British child.

I note that [24] states "Where a mother and father are living together with their children a refusal to permit one parent to

reside with the child within the Member State would be seriously detrimental to the family's unity and relationships and would be contrary to the best interests of the child who is entitled to the differing caring roles of mother and father." (Section 55 makes you legally obligated to take into account the best interests of a child).

It is, however, the case that (in Zambrano Cases) the Home Office are refusing to confirm the right of residence of non-EEA family members of a British child - if there is another family member who has a right to reside in the UK on another basis (a person known under the regulations as an "exempt person").

Knowing that the parents of an EEA National Child are BOTH entitled to remain in the UK with their child (or looking at it the other way around, an EEA National child is entitled to remain with both of their parents).

Can you please provide me with your equality impact assessment, or any other document that outlines the reasoning for a British child not being treated equally to - and in fact holding less rights than - an EEA national child, despite Article 10 of the TFEU (Consolidated version here: <http://eur-lex.europa.eu/LexUriServ/LexU...>) Stating "Article 10 In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

I am sure that you also hold some form of policy notice / update regarding the situation of inequal treatment on the basis of nationality. Can you please provide me with this information that you hold."

5. The HO responded on 12 September 2013. It stated that it was applying section 14(1), as it considered the request to be vexatious.
6. Following an internal review the HO wrote to the complainant on 24 October 2013. It stated that it was upholding its original decision to apply section 14. The HO also explained to the complainant that he had previously received a detailed, substantive internal review of a response which cited section 14(1) (vexatious request) of the FOIA and that the findings of previous internal review responses had determined that the same considerations applied to his latest four requests, of which the present request was one.

Scope of the case

7. The complainant contacted the Commissioner on 21 September 2013 to complain about the way his request for information had been handled.
8. The complainant stated that it was clear that he was being "blackballed" by the HO. He also acknowledged that he had made a substantial number of FOI requests to the HO.
9. The Commissioner will consider whether the HO has applied section 14(1) appropriately to the requests.

Reasons for decision

10. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
11. The term "vexatious" is not defined within FOIA. However, it has been considered in the recent Upper Tribunal (the tribunal) case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. The tribunal concluded that the term could be defined as "*manifestly unjustified, inappropriate or improper use of a formal procedure*".
12. The *Dransfield* case identified four factors that are likely to be present in vexatious requests, although it noted that this list was not intended to be exhaustive or a formulaic checklist:
 - the burden imposed by the request (on the public authority and its staff);
 - the motive of the requester;
 - harassment or distress caused to staff;
 - the lack of value or serious purpose to the request.
13. The tribunal also recommended that anyone considering whether a request could be considered vexatious should take a broad "holistic" approach and consider any other factors that are relevant to the request. It also confirmed that a single factor could be appropriate to refuse a request if the weight of evidence for it was sufficient.

Burden imposed by request

14. The Commissioner's guidance on section 14 (Dealing with vexatious requests) states that: *"a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden"* (paragraph 56).
15. The Commissioner's guidance also states that a requester's past pattern of behaviour may be a relevant consideration. For instance, if a public authority's experience of dealing with a requester previously suggests that they are unlikely to be satisfied with any response and will submit further follow-up correspondence, this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.
16. The tribunal in the *Dransfield* hearing also said: *"Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...the purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA"*.
17. The HO also pointed to another statement of the tribunal in support of its application of section 14(1): *"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately value judgements to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA"*.
18. The HO explained that when applying section 14(1) to the present request, as well as considering the *Dransfield* ruling, it had also considered the Commissioner's guidance on section 14. The HO explained that it considered that the crucial indicators in relation to the complainant's request were: burden on the authority, unreasonable persistence, frequent or overlapping requests and scattergun approach.
19. The HO also referred to paragraph 56 of the Commissioner's guidance, as set out in paragraph 14 and to paragraph 57, which states: *"... if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any responses and will submit numerous follow up enquiries no matter what information is supplied, then this*

evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority."

20. The HO provided the Commissioner with a spreadsheet showing the requests it had received from the complainant. The Commissioner notes that between 29 January and 8 September 2013 the HO received approximately 65 requests from the complainant relating to immigration issues.
21. The Commissioner notes that on 8 April 2013 the HO received four requests from the complainant, all either directly or indirectly related to immigration issues. For example, one of the requests referred to a consultation document regarding legal aid being removed. The complainant provided the website address which showed that the document covered fee remission and immigration; he then went on to request all of the information held by the HO. The Commissioner also notes that on 9 April 2013, the HO received seven more requests from the complainant, all related to immigration.
22. The HO explained that the requests received were not straightforward, often complex and that the staff who dealt with immigration matters were already under pressure from their normal workload. Furthermore, the HO stated that it could not justify the extent to which staff were being diverted from their core duties to deal with the complainant's requests.
23. The HO also explained that it considered that, in line with the Commissioner's guidance, the complainant's requests were frequent and/or overlapping. The Commissioner's guidance on section 14 describes frequent or overlapping requests as: *"The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquires."*
24. The HO explained that between 2 and 8 April 2013 it had received four requests for legislation and guidance regarding Zambrano¹ from the complainant. Furthermore, on 22 and 29 April 2013 the HO received a further two requests on the same issues.

¹ This is a case in which it was held that parents of a child who is a national of a Member State must be granted the right to work and the right to residence in that Member State.

25. The HO also confirmed that it had received nine requests from the complainant in April 2013 relating to immigration legislation, before it had had the opportunity to respond to outstanding requests. The HO argued that the pattern of the complainant's requests appeared to take on a vexatious nature. The Commissioner also notes that during the time period in question the complainant was also requesting internal reviews.
26. The Commissioner notes that in August 2013, the HO received a further eight requests from the complainant.

Motive of the requester

27. The HO explained that with regard to the motive, value and purpose of the request, it felt that it was clear that the complainant's primary aim was to reverse the decision that his wife was not entitled to stay in the UK. The HO noted that the complainant had his own website, on which he discussed his wife's immigration status.
28. The HO went on to acknowledge that the complainant could use the FOIA to try to obtain information which would help him to understand the decision or enable him to challenge it. The HO confirmed that it had provided the complainant with guidance in response to earlier requests. However, the HO also explained that it considered that the number and nature of the complainant's requests had become such that any legitimate purpose had been exceeded. The HO also stated that it believed that the FOIA was being used disproportionately in this case.
29. The HO pointed out that if the complainant (or his wife) objected to a decision taken with regard to this wife's status in the UK, there are appeal procedures and avenues which they could pursue.

Value or serious purpose of request

30. It is important to note that it is the request which is deemed to be 'vexatious' not the requester. FOIA is considered to be applicant and purpose blind. However, this does not mean that a public authority cannot take into account the wider context in which a request is made and any evidence the requester volunteers about the purpose behind the request.
31. The HO explained that with regard to the value or serious purpose of the request as well as wishing to reverse the decision regarding his wife not being able to stay in the UK, the complainant had also posted an annotation on the 'WhatDoTheyKnow' website. The HO noted that in

relation to his wife's visa, the complainant stated that his messages and emails were mostly drivel, but he hoped that his whining would help somebody.

32. The HO explained that whilst it did not wish to read too much into this statement and it was not suggesting that the complainant was saying that his FOIA requests were mostly drivel, it could be seen as an acknowledgment by the complainant that he was adopting rather a scattergun approach. The Commissioner's guidance on section 14 states that a scattergun approach is that: *"The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed."*

Conclusion

33. The Commissioner has considered the arguments put forward, together with the context in which the requests were made and the evidence supplied. He is satisfied that the complainant's requests have placed a significant burden upon the HO's resources.
34. The Commissioner also considers that it is reasonable for the HO to take steps to limit the amount of resources it spends on the complainant's requests.
35. The Commissioner therefore considers that the HO has applied section 14(1) to the requests appropriately.

Right of appeal

36. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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
Group Manager

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF