

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to immigration law. The Home Office did not respond to this request in line with the FOIA as it stated that it dealt with it as an enquiry, rather than as a request for recorded information.
2. The Commissioner's decision is that in failing to deal with the complainant's request in accordance with the FOIA, the Home Office breached section 1(1) of the FOIA. It is now required to respond in accordance with the FOIA.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant's information request under the FOIA.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Background

5. The request mentions "Surinder Singh". This is a reference to a historic immigration law case, the implications of which are explained here: <https://www.gov.uk/family-permit/surinder-singh>.

Request and response

6. On 28 December 2013 the complainant wrote to the Home Office and requested information in the following terms:

"Could you provide me with any guidance, legislation or otherwise which might outline a prevention of a dual irish/british national from benefiting from the case of surinder singh via ireland."

7. The Home Office responded on 13 January 2014. It stated that the request had been dealt with as "a general enquiry rather than as a request for specific information under the Freedom of Information Act 2000". In line with this approach, this response did not address whether recorded information within the scope of the complainant's request was held, or whether any recorded information that was held would be disclosed.
8. An exchange of correspondence followed during which the complainant requested an internal review. In a response of 4 September 2014 the Home Office stated that it could not carry out an internal review as the complainant's request had not been handled under the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 26 January 2015 to complain about the handling of his information request. The complainant's correspondence with the Home Office had continued beyond the point described above, but the scope of the complaint was clarified with the complainant and he agreed that this case should focus on his original 28 December 2013 request.
10. The Home Office was subsequently contacted by the Commissioner and invited to issue a response to that request that was in line with the FOIA, given that its earlier response had stated specifically that the complainant's request had not been dealt with under the FOIA. The Home Office declined to take this step.

Reasons for decision

Section 1

11. Section 1(1) of the FOIA provides that in response to an information request a public authority must confirm or deny whether it holds the requested information and, in relation to any information that is held, this must either be disclosed, or a reason valid under the FOIA given as to why this information will not be disclosed.
12. In this case, the Home Office attempted to deal with this request informally outside the scope of the FOIA. This is despite the wording of the request being clear that it is seeking recorded information. Dealing with a request informally may be appropriate in some circumstances, such as where the public authority believes that this would be the best means to assist the requester. This approach relies, however, on the requester agreeing to it. If the requester maintains that they wish their request to be dealt with under the FOIA, the public authority is obliged to do so.
13. In failing to respond within the parameters of the FOIA to what was clearly a request for recorded information, the Home Office breached the requirements of section 1(1) of the FOIA in this case. At paragraph 3 above the Home Office is now required to provide a response to this request that does comply with the FOIA.

Right of appeal

14. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

15. 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.
16. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF