

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 April 2019

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

Decision (including any steps ordered)

1. The complainant has requested information about entry clearance settlement applications from the Home Office ("HO"). The HO advised the complainant that it does not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the HO does hold the information that was requested.
3. The Commissioner requires the HO to take the following steps to ensure compliance with the legislation:
 - either provide the requested information or issue a valid refusal notice.
4. The HO 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 Act and may be dealt with as a contempt of court.

Background

5. The request relates to the application procedure for someone living abroad wanting to join a partner, child or other family member who is already settled in the UK.
6. The HO has advised the Commissioner as follows:

"By way of background, UK Visas and Immigration (UKVI) operate changes continuously, particularly in relation to where they process different types of visa applications (this can literally change from day to day to help mitigate IT problems, or to cope with fluctuations in demand) and how they handle the supporting documents at a particular location and for a particular type of application. Because of this UKVI don't have a simple way to tell someone the situation at any particular time and even if they were to put together this sort of information, in all probability it would be out of date within a few weeks of them releasing it. Hence they rely on their commercial partners to update this information as necessary on their location specific websites, which act as the main reference point - and which UKVI themselves use".

7. Regarding its current application process the HO explained:

"Currently the various options are (not all may have been available at the time this FOI was made):

- The customer takes all documents to a Visa Application Centre and these are sent to the Decision Making Centre (this option is being phased out);*
- The customer takes all documents to a Visa Application Centre and these are scanned there;*
- The customer takes all documents to a Visa Application Centre and copies are sent to a Commercial Partner scanning hub;*
- The customer sends documents direct to UKVI Sheffield with a return envelope (available in the USA as some customers do not apply through a VAC but give their biometrics at a Department of Homeland Security office);*
- The sponsor sends supporting documents to UKVI Sheffield from an UK location with a return envelope;*
- The customer self-uploads their documents to a Cloud (this is a new option)".*

8. The HO was also asked to explain why its processes were subject to change. It advised the Commissioner:

"... UKVI's business evolves and changes continuously. The processes have changed in part because more locations have routed case consideration to Sheffield so the process changed from documents being sent to a Decision Making Centre overseas to being sent to Sheffield. The processes have also changed within individual countries as Commercial Partners offered a range of options. Options are continuing to evolve: the on-line application process is now changing to allow customers to self-upload their own documents with documents which in the past were only scanned at a Visa Application Centre. Also one Commercial Partner is now

offering a scanning service in the UK. That is leading UKVI to close off the option of sending physical documents to Sheffield when an UK scanning option is available”.

Request and response

9. On 22 November 2018 the complainant wrote to the HO and requested information in the following terms:

“I wish to make a Freedom of Information request regarding entry clearance settlement applications.

The procedure for where to post supporting documents for entry clearance settlement applications varies depending on which country you are applying from. In some countries the applicant brings the supporting documents to the biometrics appointment and in some countries the applicant sends the supporting documents to Sheffield.

Could you please provide us with a list of countries of application that require you to send the supporting documents to Sheffield and a list of countries of application that require you to bring the supporting documents to the biometrics appointment?

If possible, it would also be really helpful if you could also tell us about any upcoming changes to where you send supporting documents that have not yet taken effect”.

10. On 14 December 2018 the HO responded. It denied holding the requested information.
11. On 14 December 2018, the complainant requested an internal review.
12. On 29 January 2019, the HO sent the outcome of its internal review. It maintained its original position but did provide some limited information by way of advice and assistance.

Scope of the case

13. The complainant contacted the Commissioner on 7 February 2019 to complain about the way her request for information had been handled. She disputed the accuracy of information which was provided by way of advice and assistance at internal review stage. She also stated:

“It is entirely unreasonable of the Home Office to refuse to provide accurate and easily accessible information on something as basic as

application procedures. Access to clear information about how to make an immigration application is the absolute bare minimum that one can expect from a government department responsible for immigration.

This information is clearly held by the Home Office, as it is impossible for the Home Office to process applications without knowing whether supporting documents are sent to Sheffield or received by the VAC. Also, this information is clearly held as it was reproduced in the spreadsheet, despite the questions raised about its accuracy”.

14. 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 FOIA. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
15. The Commissioner will consider below whether the HO was correct in stating that it does not hold the requested information.

Reasons for decision

Section 1 – general right of access

16. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
17. In this case, the complainant suspects that the HO holds information from which it could answer the request. The HO’s position is that it does not.
18. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant’s request.
19. The Commissioner will consider the complainant’s evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is

not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

20. In responding to her enquiries the HO advised the Commissioner that it had no need for a centrally held list as per the request, adding that no staff were able to find a personal or locally made one. As such it was satisfied that no such information exists. It further added that it did not believe that any such list had ever been created and since deleted. The HO added that it had no formal process or reason for recording this type of information.
21. The HO said that any information, if it were held, would be held electronically. Therefore:

"... individual staff were requested to search their personal areas and any shared folders they used to see if they could find similar information that may have been created by an individual member of staff. Searches were carried out on all personal and shared documents in the relevant teams"

It added that these searches:

"... included emails and networked drives. Home Office staff cannot save information to local drives".

22. Regarding the processes it uses for dealing with the applications the HO explained:

"UKVI's operating model has changed, and continues to change, in significant ways. Up to the early to mid 2000s they had individual entry clearance posts based in many British diplomatic missions around the world (about 160 in the early 2000s) where entry clearance applicants would apply in person and entry clearance officers based at that mission would make decision on applications. At the outset, UKVI started using commercial partners based in commercial premises to take in applications at visa application centres (VACs) on their behalf, sending the applications and supporting documents to the local entry clearance post for a decision. From there they moved to a 'Hub and Spoke' model where applications would be made at 'spokes' and were fed into a regional decision making centre – the 'hub' – the documents being delivered locally, or couriered by the commercial partner if the spoke was remote. They have now reached the stage where currently they operate in just 10 decision making centres overseas and much of their work is now processed in the UK."

Couriering documents is a significant cost to the business, so a major part of this work was changing how UKVI handle supporting documents, and those changes are continuing. Sheffield is now the major centre for processing settlement applications and in many locations UKVI moved from asking customers to submit supporting documents at the visa application centre to sending them direct by courier to their processing centre in Sheffield. However it was not practical or feasible to do this in all locations, for example because of a lack of an adequate courier service, or where UKVI still process settlement applications overseas and did not have a document handling centre as they do in Sheffield. It was a situation that changed frequently and they did not maintain lists which would give, at any particular time, the arrangements for supporting documents across their operation. Nor did they maintain lists of what the arrangements would be in the future. Instead relying on commercial partners to publish this information on their own commercial websites which the customer is able to refer to when preparing to submit their application”.

23. As part of its submissions to the Commissioner the HO further added:

“The information is not held centrally as requested in this FOI. It is probable that information on handling supporting documents would be held collectively in one form or another across the business, but not in such a way that it could be retrieved within the FOI cost limit. There would be no simple search term guaranteed to find every communication related to document processing and therefore to find the information requested would have required a large number of officials and employees of our commercial partners examining a very large number of emails. Furthermore, even had such information been held in a readily accessible format, future plans for document handling would not have been reliable as they would be subject to change up to the time that they were introduced”.

24. The HO has undertaken relevant searches and approached appropriate staff without locating anything. It therefore seems clear to the Commissioner that the requested information is very unlikely to be held in the format requested by the complainant. She also recognises that this is an area of work where processes seem to be in the process of changing rapidly so that any information which could be located may quickly go out of date and be of little use to the complainant.

25. However, whilst any information held may be of little practical use to the complainant as it is unlikely to be current for a significant period of time, the Commissioner nevertheless notes the HO’s own submission above that *“it is probable”* that relevant information *“would be held collectively in one form or another across the business”*. On this basis she is unable

to accept the HO's conclusion that the requested information is not held, albeit that it is not available in the specific format requested.

26. The Commissioner therefore decided that, on a balance of probabilities, the information was held by the HO at the date of the request.
27. The HO is therefore directed to respond to comply with the step at paragraph 3.

Right of appeal

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

29. 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.

30. 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

Carolyn Howes
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