

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2019

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

Decision (including any steps ordered)

1. The complainant has requested information about its visa and immigration partners from the Home Office ("HO"). The HO responded to the request but it was unclear whether or not this was under the terms of the FOIA. In response to the Commissioner's enquiries it advised that it considered that it had responded in full to the request, albeit no actual information was provided, as relevant staff had provided responses based on their knowledge.
2. The Commissioner's decision is that the HO's response is not compliant with the requirements of the FOIA. In failing to provide a response which is compliant with the FOIA the HO has breached section 1 of the FOIA.
3. The HO is required to:
 - issue a fresh response advising the complainant whether or not it holds any recorded information and, if so, it must either disclose that to him 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.

Request and response

5. On 14 November 2018 the complainant wrote to the HO and requested information in the following terms:

"I would like to make a Freedom of Information request for the following information:

1. Are Commercial Partners of the Home Office (for example VFS Global) required to follow UKVI [UK Visas and Immigration] policy when administering visa applications?

2. If Commercial Partners of the Home Office (for example VFS Global) do not follow UKVI policy when administering visa applications, does this constitute an error on the part of the commercial partner?

3. When a Commercial Partner makes an error, what recourse is available for an applicant?

I would also like to apologise for the straight-forward nature of these questions. The Home Office's Commercial Partner VFS Global (specifically the country manager for Australia and New Zealand, [name removed]) is currently refusing to answer basic questions about its obligations, and so I've had to try and find another avenue for officially clarifying this arrangement in writing. [Name removed]'s behaviour is, unfortunately, reflecting very poorly on the Home Office".

6. The HO responded on 30 November 2018. It stated the following:

"The Home Office has contracted two suppliers VFS and TLS to run their global network of visa application centres. The commercial partners' role is restricted to enrolling customers' biometrics, digitising supporting documentation and returning decisions. Commercial partners have no involvement in deciding visa decisions, which are made by Home Office staff. The commercial partners work to agreed operating procedures stipulated by UKVI, various service level agreements are set out in the contract measuring the speed, accuracy and security of all aspects of their work. Performance against the service standards is monitored on an ongoing basis, failure to meet the service standards can result in financial penalties. If a customer believes a commercial partner has made a mistake whilst processing their visa application, they can make a complaint either direct to the commercial partner and/or through UKVI".

7. The HO did not provide any recorded information and did not cite any exemptions.

8. Following an internal review the HO wrote to the complainant on 21 December 2018. It maintained that it had complied with the request saying:

"... I am satisfied that the original response correctly responded to your request.

I note that your FOI request does not ask for specific recorded information and instead appears to be asking for comment. Instead of asking you to clarify your request, a response was provided to you to be helpful, providing the details of the suppliers contracted by the Home Office to run their global network of visa application centres. I am satisfied that the response suitably answers the questions raised in the request.

When submitting FOI requests in the future it would be helpful if you could be as specific as possible about the particular recorded information that you are interested in".

Scope of the case

9. The complainant contacted the Commissioner on 3 April 2019 to complain about the way his request for information had been handled.
10. As it was initially unclear whether or not the HO had dealt with his request under the terms of the FOIA or as 'business as usual', the Commissioner raised queries with the HO. On 19 July 2019 the HO confirmed that it had been dealt with as a request under the FOIA.
11. At this stage the Commissioner invited the complainant to submit grounds of complaint on that basis, which were provided on 23 July 2019. The complainant asked her to consider whether the HO was entitled not to provide any recorded information in respect of his request.
12. 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 is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. 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.

Reasons for decision

Section 8 – request for information

13. Although not formally raised as an issue, the Commissioner notes that, in its internal review response, the HO indicates that the complainant is

asking for comments rather than recorded information and later goes on to advise the Commissioner that it:

"... wanted to reiterate that [the complainant] did not ask for recorded information in the form of particular policies, papers or documents. He asked a series of questions which essentially required the Home Office to answer yes/no. However, we determined that we did consider this to be a valid request".

14. For completeness, the Commissioner has therefore initially considered whether or not this is a valid request.

15. Section 8 of the FOIA states:

(1) In this Act any reference to a "request for information" is a reference to such a request which-

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

16. In this case, the complainant made his request in writing, stated his name and gave an address for correspondence. Therefore the requirements of section 8(1)(a) and (b) were satisfied.

17. The Commissioner considers that a request will meet the requirements of section 8(1)(c) as long as it contains a sufficient description of the information required. Each request has to be judged on its individual merits as to whether there were sufficient indicators provided to enable the information requested to be adequately described for the purposes of section 8. As long as a request attempts to describe the information it is likely to meet the requirements of section 8(1)(c) as it is always open to the public authority to seek further clarification to identify the information.

The Commissioner's view

18. In her guidance¹ for organisations on what they should do when they receive a request, the Commissioner states:

"Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way...."

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

This is not a hard test to satisfy. Almost anything in writing which asks for information will count as a request under the Act. The Act contains other provisions to deal with requests which are too broad, unclear or unreasonable”.

19. The Commissioner has considered the wording of the request in this case. She accepts that parts (1) and (2) are phrased as questions designed to obtain a 'yes' or 'no' type response from the HO, while part (3) requires a response about a complaints procedure.
20. She considers that, although phrased as questions, the wording of all parts was sufficiently descriptive to allow the HO to identify the information sought. It is also noted that in responding to her enquiries the HO advised the Commissioner that it:

“... determined that [it] did consider this to be a valid request under the Act, on the basis that recorded information would likely to have [sic] existed, that allowed someone to respond to the request...”.

21. The Commissioner agrees that it is highly likely that there are written policies, procedures, contracts or other documentation that would be likely to hold details of the processes concerned. She therefore finds that the request is compliant with section 8 of the FOIA.

Section 1 – general right of access

22. Section 1(1) of the FOIA states:

“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.”

23. It is clear from this that the first requirement of section 1 of the FOIA is that a public authority must determine whether or not it holds the information that has been requested.

The complainant's position

24. The complainant is not satisfied that the HO has responded to his request. He finds its response to be general and not specific to what he has asked for. He also believes that if it holds recorded information with which it can answer his queries it should disclose it.

The HO's position

25. In response to her enquiries as to whether or not any recorded information is held, the HO advised the Commissioner as follows:

"... recorded information would likely to have existed [sic], that allowed someone to respond to the request (i.e. to be able to then answer 'yes' or 'no'). This information was not gathered however, as staff were aware of the answers to the questions".

"... the initial request did not ask for copies of any policy or guidelines, it just asked a series of questions which were answered in full. The questions were answered without the need to include any other recorded information; none was requested".

"... the answers to [the complainant]'s questions would have been based on information contained in the contracts. However, [the complainant] did not ask for copies of the contracts".

"...No searches were carried out as such – answers were provided by operational leads, who knew the answers to the yes/no questions. The response did not require any searches to be carried out".

The Commissioner's view

26. Having looked at the HO's submissions to her, and its correspondence with the complainant, the Commissioner is not satisfied that the HO has actually ascertained whether or not it does hold the requested information. Rather, it appears to have assumed that related information would be "*contained in the contracts*" with the parties concerned and that recorded information must exist in order for the questions to have been answered. It has then simply based its response to the complainant on questions it has put to relevant staff.
27. Whilst the complainant has not specified that he wants copies of particular documents, he would not be required to do so and could not be expected to know what information the HO actually holds which might be of relevance. In compliance with section 8 of the FOIA, he is only required to describe the information he wants which the HO has accepted that he has done. The HO is then required, under section 1 of the FOIA, to confirm whether any recorded information is held and to disclose that information (unless any exemption applies).
28. Despite being invited to reconsider its position, the HO has not demonstrated that it has conducted searches or made enquiries capable of establishing whether relevant information was or was not held at the time the request was received. The Commissioner is therefore not in a

position to form a judgement as to whether, on the balance of probabilities, it holds the information requested.

29. It follows that the Commissioner is not satisfied that the HO complied with the duty at section 1(1)(a). She now requires the HO to take the action set out at paragraph 2 to rectify this.

Other matters

30. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Engagement with Commissioner

31. In raising her initial enquiries with the HO the Commissioner first asked it to confirm whether or not it considered this request to be valid under the FOIA as this was unclear from its responses. She advised that, if it did consider it to be valid, it should confirm this to her so she could raise further relevant enquiries.
32. It took the HO 19 working days to simply confirm that this request had been treated as valid under the FOIA which then necessitated further enquiries from the Commissioner, and entailed a further delay for the complainant.
33. Whilst she had written to the HO about two complaints from this same complainant they were dealt with as separate enquiries and not amalgamated in any way. The HO then chose to respond to the two sets of enquiries in one response and, with the other one requiring a fuller response, this has seemingly delayed this request. In respect of this case the Commissioner is very disappointed that it should have taken so long to answer a simple initial enquiry.

Handling of request

34. Given the resources available to it, and its familiarity with the requirements of the FOIA, the Commissioner is further disappointed that this request was handled so poorly.
35. In response to the Commissioner's enquiries, the HO advised that searches for information were not undertaken as staff "knew the answers" so it was not necessary. This is clearly not in line with the requirements of the legislation. The first step that any public authority is required to do is to ascertain what, if any, information it holds. It is not sufficient to simply provide a generic response. The FOIA is concerned with the provision of recorded information, where held.

36. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her Regulatory Action Policy³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

37. 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@justice.gov.uk

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

38. 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.
39. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF