

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 March 2014

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

#### **Decision (including any steps ordered)**

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1. The complainant made seven requests to the Home Office, all of which were refused on the grounds that they were vexatious under section 14(1) of FOIA.
2. The Commissioner's decision is that the Home Office has applied section 14(1) appropriately to the requests.
3. The Commissioner does not require the public authority to take any further steps.

#### **Background**

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4. The complainant has made several requests to the Home Office (HO) for information relating to immigration or how the HO operates. The Commissioner has found that some of the requests were vexatious and has issued decision notices, upholding the HO's application of section 14(1) to those requests (FS50496058 and FS5050202).

#### **Request and response**

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5. On 4 May 2013, the complainant wrote to the HO and requested information in the following terms:

*"On your website at:*

<http://www.ukba.homeoffice.gov.uk/siteco...>

*You list the following file:*

*COMPLAINTS MANAGEMENT GUIDANCE*

*Implementation Date 10/05/2012 Next Review Date 01 January 2013*

*1. As the review date has since passed, can I please request any updated documents which UKBA currently store (Complaints Management Guidance)*

*Additionally on the same page it is listed with the following text: "This document contains guidance for UK Border Agency staff on the handling of complaints about our service or our professional conduct. It does not cover the handling of other types of complaint. "*

*2. Is there any further guidance which has been issued to UKBA staff to deal with "other types of complaint."?  
2a) If so can I please request a copy of this guidance.*

*If any redactions are required I request that the bare minimum data is redacted, details of the redactions are made clear - IE: any policy notice number, dates of issue ETC ETC, a clear indication of the amount of data which has been redacted, and the reasons for the redactions."*

6. The HO responded on 11 June 2013. It stated that it considered the request to be vexatious, citing section 14(1).
7. Following an internal review the HO wrote to the complainant on 17 September 2013. It stated that it was upholding its original decision to apply section 14(1).

### **Scope of the case**

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

## Reasons for decision

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11. 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.
12. The term "vexatious" is not defined within FOIA. However, it has been considered in the recent First-tier 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*".
13. 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.
14. 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*

15. 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"*.
16. 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, then this evidence could strengthen

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

17. 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".*

18. 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".*

19. 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.

20. The HO referred to the Commissioner's guidance paragraph 56 which states:

*"A request which would normally not 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".*

21. The HO also pointed to paragraph 57 of the Commissioner's guidance, 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".*

22. The HO provided the Commissioner with a spreadsheet showing the requests it had received from the complainant. The HO explained that it had applied section 14(1) to the request of 7 May 2013 because, between 29 January and 7 May 2013, it had received approximately 50 requests from the complainant relating to immigration issues. Furthermore, the HO explained that it appeared that the requests were related to the complainant's wife not being granted leave to stay in the UK. The HO also explained that the complainant had his own website, on which he discussed his wife's immigration status.
23. 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.
24. The HO explained that the requests received were not straightforward, were 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 the staff were being diverted from their core duties to deal with the complainant's requests.
25. The HO explained that the complainant's wife had not been granted leave to stay in the UK. It acknowledged that the complainant could use the FOIA to try to obtain information which would help him understand the decision or enable him to challenge it. The HO also confirmed that it had provided the complainant with guidance in response to earlier requests.
26. The HO argued that the number and nature of the complainant's requests had become such that any legitimate purpose had been exceeded. The HO also argued that the FOIA was being used disproportionately. Furthermore, the HO pointed out that if the complainant (or his wife) objected to a decision taken with regard to his wife's status in the UK, there are appeal procedures and avenues which they could pursue.
27. Furthermore, the HO 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”.*

28. The HO explained that between 2 and 8 April 2013 it had received four requests for legislation and guidance regarding Zambrano<sup>1</sup> from the complainant. Furthermore, on 22 and 29 April 2013 the HO received a further two requests on the same issues.
29. 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.
30. The Commissioner has considered all of the above. Whilst he understands that the complainant has concerns about his wife's immigration status, the Commissioner also acknowledges that there are appeal procedures that can be pursued.

#### *Motive of the requester*

31. 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.
32. 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 also 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.
33. The HO pointed out that if, again, the complainant (or his wife) objected to a decision taken with regard to his wife's status in the UK, there are appeal procedures and avenues which they could pursue.

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<sup>1</sup> 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.

*Value or serious purpose of request*

34. 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.
35. 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.
36. The HO explained that, whilst it did not wish to read too much into this statement, and 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*

37. 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.
38. 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.
39. The Commissioner therefore considers that the HO has applied section 14(1) to the requests appropriately.

## Right of appeal

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40. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**



## **Appendix 1**

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### **Request 1 11 August 2013**

*"In 2008, it was reported that the Home Office had paid £400,000 to fund the series UK Border Force for Sky television.*

*I am aware that the funds were later returned to "avoid controversy", however, for the purposes of my FOI request, such funding was still provided.*

*I ask:*

*1) Please detail all instances available since the initial funding of the UK Border Force series of any television programmes funded by The Home Office.*

- a) How much money*
- b) The date the funds were paid*
- c) the series / programme / film it was funding*
- d) the job role of the individual who authorised the funding*
- e) the reasoning behind the funding, and how the Home Office justified the clear misuse of taxpayer money."*

### **Request 2 12 August 2013**

*"On FOI 28337 (  
<https://www.whatdotheyknow.com/request/s...> )  
you state the following:*

*"The time taken to complete a specific SET O application will depend which route of settlement is being applied for on the application form, a small number of applications are currently extending beyond the 6 month target however a plan is in place to bring all routes back within service standard."*

*Can you please provide more details of this plan. Can you please provide us with documents which outline the steps you are taking, and whether it is expected that other areas of business will suffer as a result."*

### **Request 3 30 July 2013**

*"At:  
<http://www.ukba.homeoffice.gov.uk/policy...>*

*We have:*

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*If an EEA national temporarily ceases employment, they can still be considered a qualified person under the following circumstances:*

*=They are temporarily unable to work as the result of an illness or accident*

*=They are involuntarily unemployed and have started vocational training; or*

*=They have \*voluntarily\* stopped working and started on vocational training related to their previous employment.*

*===were employed for one year or more before becoming unemployed;*

*===have been unemployed for no more than six months; or*

*===can provide evidence that they are seeking employment in the United Kingdom and have a genuine chance of being engaged*

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However....

At:

<http://www.legislation.gov.uk/uksi/2006/...>

6(2) We have:

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*(2) A person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—*

*(a)he is temporarily unable to work as the result of an illness or accident; .*

*(b)he is in duly recorded \*involuntary\* unemployment after having been employed in the United Kingdom, provided that he has registered as a jobseeker with the relevant employment office and—*

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*(i)he was employed for one year or more before becoming unemployed;*

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*(ii)he has been unemployed for no more than six months; or .*

*(iii)he can provide evidence that he is seeking employment in the United Kingdom and has a genuine chance of being engaged; .*

*(c)he is involuntarily unemployed and has embarked on vocational training; or .*

*(d)he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.*

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*It appears that the Home Office have mixed up 6(2)(b) and 6(2)(d)...*

*So I ask: Who authorises the information that is published on your website, and confirms that the information is VALID and NOT MISLEADING.*

*It appears clear that your own guidance is riddled with inaccuracies, and misleading information."*

**Request 4 11 August 2013**

*"RE: Race Relations Act 1976...*

*Can you please provide me with a copy of the document you might of completed that outlines that your policy for assessing the income levels required to sponsor a visa applicant into the UK is not directly in breach of the Race Relations Act 1976, as I seriously cannot see how such clear discrimination can be anything but a crime as per UK law.*

*I am also interested in your assessment for the purposes of equality your reasoning for allowing a UK national to be treated less favourably when it comes to sponsoring their family members to the UK than another EEA national would be treated."*

**Request 5 26 July 2013**

*"I am aware that Home Office Presenting Officers (HOPO) undertake an induction course with yourselves. I am aware that such a course does in fact take a number of days to complete.*

*I request release of the training material, including powerpoint presentations, and handouts that you use during the induction courses.*

*To ease your search for the requested information, I am aware that the training materials is developed by:*

*Professional Development Team  
Litigation and Appeals Management Directorate  
Central Operations and Performance*

*I also point out that I have infact already seen PRESENTING OFFICER INDUCTION COURSE - DAY ONE, Version 2, issued 01/10/2008.*

*As this document was produced close to five years ago, I am unsure whether (name redacted) or (name redacted) would still be the main authors of the document requested. I do, however, trust that this would help you direct the request onto the correct department.*

*I also highlight that I am only requesting information produced for the Induction Course - to which I am aware was an 11 day course in 2008."*

### **Request 6 9 August 2013**

*"I am writing today in relation to the case of MA and SM (Zambrano: EU children outside EU) Iran [2013] UKUT 00380 (IAC) available here:  
<http://www.bailii.org/uk/cases/UKUT/IAC/...>*

*Following the determination of the judge in the upper tribunal, I am requesting to know any stored information and policies arising from this case.*

*As both appeals were allowed by Judge O'Connor:*

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*First appeal*

*The determination of the First-tier Tribunal has been set aside. We re-make the decision on appeal allowing it on the basis that the decision of the Entry Clearance Officer of the 13 February 2012 breaches the appellant's derived rights under the Community Treaties.*

*Second appeal*

*The determination of the First-tier Tribunal has been set aside. We re-make the decision by allowing it on Article 8 grounds.*

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*I ask: Are UKBA and the EURO department intending to alter their practices of refusing applications simply because the other parent can care for the child. It is clear from these rulings that such a decision is clear to fail in the appeal stages on the basis of Article 8.*

*Can you please provide myself with any document you have stored in relation to this case.*

*I am aware that there may well be documents held that will*

*obviously be redacted ETC due to the significant amount of personal information relating to the case. I do not however request copies of any personal files of the appellants.*

*I would appreciate copies of the Home Office Presenting Officer (HOPO) files and notes where possible too.*

*Should any documents be redactable, unless it is clearly part of the appellants personal information, I would appreciate only the bear minimum information redacted, and you to outline the number of documents / pages redacted."*