

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2021

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF
(email to: info.access@homeoffice.gov.uk)

Decision (including any steps ordered)

1. The complainant requested an address through which the Home Office UK Visas and Immigration Central Operations Department could be contacted directly by email. The Home Office said that the information was not held.
2. The Commissioner decided that, following its response to the request and disclosure of some information, the Home Office held no undisclosed recorded information that was relevant to the request and had complied with the legislation.
3. The Commissioner also decided that, in failing to comply with section 1(1) FOIA within the appropriate timescale, the Home Office had breached section 10(1) FOIA.
4. The Commissioner does not require the Home Office to take any steps to comply with the legislation.

Request and response

5. On 18 February 2020, the complainant wrote to the Home Office (HO) via the 'What Do They Know' website (www.whatdotheyknow.com) to request information in the following terms:
*"Two links have been provided for contact with the UK Visas and Immigration Department of the Home Office: Central Operations: www.gov.uk/ukvi www.gov.uk/contact-ukvi-inside-outside-uk
The former is a dead link.
The latter does not provide an email address to the above department.
Would you please provide an email address so that the above department can be contacted directly."*
6. HO did not respond within the statutory timescale and then did not reply to the complainant's 20 March 2020 request for a review of its failure to respond. This followed an earlier reminder sent on 10 March 2020. Despite several further reminders, HO did not respond substantively to the request until 24 September 2020.
7. On 24 September 2020, HO said that there were no direct routes for general visa and immigration enquiries to be made by email from within the UK. Instead, HO asked enquirers to use its dedicated telephone helplines charged at local calling rates.
8. On 20 October 2020, following an internal review, HO maintained its position, implying that the requested information was not held but not making that clear. However HO did tell the complainant that general email enquiries could be made to public.enquiries@homeoffice.gov.uk.

Scope of the case

9. The complainant contacted the Commissioner on 20 October 2020 to complain about the way her request for information had been handled. She disputed HO's explanation of why it did not hold the requested information. She opined that HO did hold further recorded information and said it was, unlawfully and as a matter of policy, refusing to disclose it.
10. The Commissioner considered the representations received from the parties including about the information held by HO. She has also tested the hyperlinks referred to by the complainant in her information request.

11. The Commissioner considered the likelihood that HO held any further recorded information within the scope of the request including an email address which was suitable for use by the general public
12. The Commissioner also noted the timeliness of HO's responses to the request and considered whether they amounted to a breach of section 10(1) FOIA (Time for compliance).

Reasons for decision

Section 1 – general right of access

13. Section 1 FOIA (General right of access) states that:

"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."*

14. In scenarios such as this one, where there is dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner considers the actions taken by the authority to check that the information is not held. She also reviews any other reasons offered by the public authority to explain why it believes the requested information is not held. Having done so, the Commissioner follows the lead of a number of First Tier Tribunal decisions and applies the civil standard of the balance of probabilities.
15. The Commissioner therefore sought to determine whether, on the balance of probabilities, HO held information within the scope the request.
16. In deciding where the balance of probabilities lay, the Commissioner considered the complainant's representations. She also considered other relevant information and representations by HO.
17. The complainant told the Commissioner:
"For a public authority to withhold information it must make a case for exemption from disclosure. The Home Office has not provided an appropriate clause of the FoIA, nor a rationale as to why, in law, the

Home Office can claim exemption from disclosure. In fact, the Home Office repeatedly stated: "... no direct email routes for general enquiries into UKVI for people in the UK." The significance is clear. ... The Home Office DOES hold the information, but refuses, unlawfully and as a matter of policy, to disclose the information to people in the UK, That a public government department has a policy of not disclosing certain information to a member of the public is not a lawful, valid exemption. Whether or not, for its internal convenience, the Home Office does not offer a direct email route is an irrelevance to the FoIA. Whether or not the Home Office does not want to provide a direct email route for general enquiries is also an irrelevance to the FoIA. ..."

18. HO told the Commissioner that its UK Visa and Immigration Central Operations Department (UKVI) does not have a single contact email address, so to that extent the information was not held.
19. HO added that UKVI had a number of internal group or generic email addresses, but said these were not meant for use by the general public. Disclosure under FOIA was to the world at large so that, were HO to disclose any of its internal email addresses, they would quickly become inoperable due to the volume of traffic and would have to be discontinued. HO said that UKVI did sometimes correspond with customers by email if a case was escalated into UKVI teams, but these email communications were made from outgoing mailboxes only. An email address specifically for citizenship and nationality related enquiries - NationalityEnquiries@homeoffice.gov.uk - was given on the HO website for use by members of the public, but there was no corresponding public email address for immigration or visa enquiries.
20. HO said that it recognised that the complainant would prefer to contact UKVI directly by email, but said that it did not hold a public contact address. HO said that whether or not HO should have such a contact email address was not a matter for consideration in the context of FOIA.
21. HO added that the link www.gov.uk/ukvi was not dead but was working. HO said that, while it did not doubt that the complainant had experienced difficulty in trying to access that link in February 2020, HO had not previously been made aware of any such difficulty and could not now explain it. Both HO and the Commissioner tested the link and found it to be working at the time of the Commissioner's investigation.

The Commissioner's decision

22. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a

complainant believes it holds, it is seldom possible to prove with certainty that the public authority holds no relevant information. However the Commissioner is required to make a judgement on whether or not the information is held using the civil standard of the balance of probabilities.

23. The complainant believed that HO was attempting to use a policy position as a proxy for a FOIA exemption and said – correctly - that FOIA made no provision for information to be withheld as a matter of policy. The Commissioner noted the explanation provided by HO of what email addresses were held and of its policy position. The Commissioner considered that HO policy about the contact methods it should or should not use is not a matter which FOIA addresses and is therefore not a matter for her.
24. The Commissioner noted that the UKVI holds generic email addresses and that these had not been intended for general public use. She accepted HO's evidence that they would quickly be overwhelmed if they were to be subjected to public use. In such circumstances the Commissioner decided that those email addresses, which had not been intended for general public use, were not fit to be used for that purpose. She therefore concluded that their general disclosure as matters stood would be futile. The Commissioner recognised that the complainant was seeking an email address which was suitable for the use of the general public but accepted that UKVI does not hold one. The Commissioner therefore decided that HO had been correct to conclude that the information was not held and that HO had complied with section 1(1) FOIA.

Section 10 – time for compliance

25. Section 10(1) FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
26. The complainant said that HO had simply, and unlawfully, refused to attend to her request for information. Then, on 24 September 2020, after much delay, HO had belatedly recognised her information request as a FOIA matter.
27. In this case the request was submitted on 18 February 2020. The complainant asked for a review on 20 March 2020 following a reminder on 10 March 2020. She had then sent further reminders on 21 May, 7 June, 10 July and 18 August 2020. HO eventually issued a refusal notice on 24 September 2020.

28. As HO failed to comply with section 1(1) FOIA within the statutory timescale, the Commissioner decided that it had breached section 10(1) FOIA.
29. The Commissioner noted that the request was received during the early stages of the coronavirus pandemic. She understands the immense pressures then placed on HO and many other public authorities and is sympathetic to the difficult decisions they had to make, between prioritising essential services and continuing to meet FOIA obligations.
30. The Commissioner uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"¹ strategy 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 systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

31. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Dr Roy Wernham
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF