

Freedom of Information Act 2000

Decision notice

Date: 24 January 2013

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

Decision (including any steps ordered)

1. The complainant has written to the UK Border Agency (UKBA), an executive agency of the Home Office, to obtain information about British Overseas citizens. The Commissioner's decision is that the requests sent by the complainant do not constitute requests under the terms of the Freedom of Information Act (the Act). No further action is required.

Request and response

2. On 17 June 2012, the complainant wrote to UKBA as follows:

"Could you please let me know that a person who apply for British citizenship under sec4B of BNA 1981 provides the following evidences:

1. *Election commission of India Identity card issued in India*
2. *Driving License*
3. *Bank Passbook with photo.*
4. *Income Tax card.*
5. *Aadhar Identity card(National Card)*

Any one will vote by production of the above all identities. But the above all are not considered as Indian citizen.

Could you please let me know how UKBA dealt if BOC's from India applies for British Citizenship?

and also The BOC's lost their Indian citizenship while attained age of 18. How UKBA considers with related to the above matter?

In India there is no proper system to follow and even today there is no citizenship certificate to the residence who born in India. How it will considered if BOC's from India applies for British citizenship under sec.4N of BNA 1981."

3. UKBA responded on 5 July 2012. In its response it altered the wording of the complainant's submissions:

"1) How does UK Border Agency deal with applications from British Overseas Citizens who apply for British Citizenship under Section 4(B) of the British Nationality Act 1981?

A person has a right to be registered as a British citizen if the Home Secretary is satisfied that the person:

a. is a British Overseas citizen, or a British subject (under the British Nationality Act 1981) or a British protected person; and

b. has no other citizenship or nationality; and

c. has not renounced, voluntarily relinquished or lost (whether through action or inaction) any other citizenship or nationality since 4 July 2002

It is the responsibility of the applicant to discharge the burden of proof and so show that they do not hold any other nationality. The applicant should provide a letter from the Indian authorities confirming that he/she was at no time a citizen of that country or lost the citizenship of that country on a specific date.

2) How does UK Border Agency consider an application from a British Overseas Citizen who lost their Indian citizenship at the age of 18?

It is the responsibility of the applicant to prove that he / she is not an Indian citizen by providing a letter from the Indian authorities confirming that he/she was at no time a citizen of that country or lost the citizenship of that country at the age of 18."

This response provided the complainant with information that is contained in publications about British Overseas citizens available on UKBA's website.¹

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<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/britishcitizenship/informationleaflets/bnchapters/bn2.pdf?view=Binary>

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/britishcitizenship/informationleaflets/bnchapters/bn12.pdf?view=Binary>

4. The internal review, requested by email on 6 July 2012, was carried out by the Home Office on 19 July 2012. It stated that "although the information provided was accurate and relevant, it was not clear enough" and so provided similar information in "non-legalistic terms".

Scope of the case

5. The Commissioner received correspondence from the complainant on 17 August 2012 complaining that UKBA "failed to release the information related to why it is unable to release that the election commission Identity card will not be accepted".
6. The Commissioner has reviewed the correspondence between the two parties. The scope of the current complaint under the Act is not clear. The UKBA has attempted to provide the complainant with relevant information, but the complainant remains dissatisfied.
7. In these circumstances, the Commissioner has considered whether the request submitted to UKBA is a valid request under the terms of the Act.

Reasons for decision

Correspondence between the complainant and the Commissioner

8. The complainant has made it clear that he has not been satisfied by the responses he has received. However, he has not been able to articulate what his complaint against UKBA is. In the complainant's request for a review he stated that:

"I herewith inform you that I asked specific information as follows but UKBA didn't reveal the information which I am not satisfied and disagree.

1. I requested to confirm that as per UKBA's understands the Indian citizenship act and the letter from the Indian authority is not required to the person who doesn't held or hold Indian passport or citizenship to BOC's from India. the burden is on the application to prove applies only to the person who held Indian citizenship or passport.

2. As per the Ministry of Home affairs I herewith pasted below that a person who born in India and failed to renounce his/her citizenship upon attained age of 18 he/she lost Indian citizenship. This is the law and proof that UKBA understands the Indian Citizenship Act.

But UKBA failed to provide the definition to the above said matter and please be considered and do the needful sir."

9. The Commissioner has tried to understand the basis upon which the complainant considers UKBA has not complied with the Act, but he has been unsuccessful. In response to a request from the Commissioner for details of how UKBA had not complied with the Act, the complainant replied:

"As per the Indian citizenship Act 1955, a person lost Indian citizenship while attaining the age of 18.

The above said person never held Indian passport or Indian citizenship certificate; UKBA should register him/her as per the UKBA policy in it as UKBA understands Indian citizenship law that doesn't allow dual citizenship.

Because if a person who never held Indian citizenship certificate or Indian passport which is defined by UKBA as formal documents. UKBA may be pleased to consult the Country nationality law before taking decision and register the BOC from India."

When the Commissioner queried what was meant by this and how it related to the Act the complainant responded:

"I would like to state that I requested to UKBA under FOI act and UKBA failed to give information to me.

I never requested for citizenship application matter and I requested only under FOI act to UKBA."

Definition of a request within the terms of the Act

10. Section 1 of the Act states that:

"(1) 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...

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

11. Section 8(1)(c) of the Act states that:

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

(c) describes the information requested."

12. In a recent decision², the First Tier Tribunal (Information Rights) concluded that certain requests were not "proper" – and did not have to be considered by the public authority – because they did not describe the required information. The Commissioner's view is that this is applicable in this case.

13. Whilst the Commissioner is willing to help parties reach a compromise where a misunderstanding has arisen due to the syntax of a request, a decision from the Commissioner has to be based on the wording of the request.

14. In this case, the Commissioner does not consider that the complainant has described the information requested sufficiently to meet the definition of a request under section 8 of the Act. As it cannot be considered a valid request for information under the terms of the Act, the requirements of section 1 do not apply.

15. Whilst UKBA has managed to provide a response and subsequently review its response, the Commissioner does not consider that UKBA can be certain whether it holds "information of description specified", and so cannot be certain that their response is correct. The Commissioner's view is that UKBA should have relied upon section 1(3) of the Act, and asked for further information from the complainant to ensure that it could accurately identify the required information.

16. In their initial response, UKBA reworded the complainant's request based on their understanding of it. The Commissioner considers this to have been reasonable in the circumstances and in keeping with section 16(1) of the Act and paragraph 7 of the section 45 Code of Practice:

"Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information."

² EA/2012/0075 – Stephens v IC & Crown Prosecution Services page 4

Where a public authority takes this course of action, the Commissioner would normally consider it appropriate for the public authority to confirm the amended scope with the requester before proceeding. However, in all the circumstances of this case, he makes no criticism of UKBA in that regard.

17. Having considered the attempts made to understand and meet the request in this case, the Commissioner has concluded that the request made cannot be considered valid under the terms of the Act. The Commissioner's decision, therefore, is that no further action is required from UKBA.

Other matters

18. Paragraph 12 of the section 45 Code of Practice indicates one form of assistance a public authority should give to a requester:

"The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act."

The Commissioner considers that UKBA has complied with this in its responses to the complainant.

Right of appeal

19. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF