

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2013

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

Decision (including any steps ordered)

1. The complainant has requested information about complaints raised in relation to the removal procedures imposed on the parent of a British child.
2. The Commissioner's decision is that the Home Office has applied section 14(1) appropriately. However, he considers that the Home Office has breached section 10(1).
3. The Commissioner does not require the Home Office to carry out any steps.

Request and response

4. On 30 March 2013, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"Perhaps (well, no, I am actually pretty sure that) the following should also be taken into consideration, when UKBA consider Zambrano ...

The United Nations Declaration of the Rights of the Child.

Specifically Article's 1 and 6. In addition to the specific statement "to the end that he may have a happy childhood". (We all know children prosper with both parents present.

6.The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in

the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Article 24 (of charter of fundamental rights of EU)

Rights of a Child – Reads as follows:

2. In all actions relating to children, whether taken by public or private institutions, the child's best interest must be a primary consideration.

3. Every child shall have the right to maintain a personal relationship on a regular basis and a direct contact with both his or her parents, unless that is in contrast to his or her best interests.

I note that the UKBA should take into account the information above when considering ALL Zambrano cases involving children.

Now, I ask the following: considering that EU Law and UN treaties states that above, how many complaints have been raised in relation to removal procedures imposed on the parent of a british child?

Please supply all information on the complaints, and any details of cases which have been taken to the ecj in relation to the above."

5. The HO responded on 28 June 2013 and explained that it was applying section 14(1) – vexatious request. Prior to this response the complainant had requested an internal review of the delay in responding to his request. On 21 May 2013 the HO confirmed that it had carried out an internal review into the way it had handled the request. It acknowledged that it had breached section 10(1) of the FOIA and apologised for this.
6. On 29 June 2013 the complainant requested an internal review of the HO's response of 28 June 2013. On 9 July 2013 the HO confirmed that it had carried out an internal review and was upholding its application of section 14(1).

Scope of the case

7. The complainant contacted the Commissioner on 30 April 2013 to complain about the lateness of the HO's response to him. Subsequently, on 31 July 2013 the complainant confirmed that he was also complaining about the application of section 14(1).
8. The Commissioner will consider the HO's application of section 14(1) and the length of time taken to respond to the complainant's request.

Reasons for decision

Section 14 – Vexatious Requests

9. 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.
10. The term "vexatious" is not defined within FOIA. However, it has been considered in a recent case in the First-tier Tribunal (the tribunal) of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. This concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of a formal procedure".
11. The *Dransfield* case identified four factors that are likely to be present in vexatious requests, although it noted that this list is not intended to be an exhaustive or 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.
12. The tribunal 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.
13. The HO acknowledged the four broad issues of the *Dransfield* judgment.

Burden imposed by request

14. The Commissioner's guidance on section 14 ('Dealing with vexatious requests (section 14)') 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".

15. This guidance also states that a requester's past pattern of behaviour may also be a relevant consideration. For instance, if a public authority's previous experience of dealing with a requester 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.

16. The tribunal in the *Dransfield* hearing said:

"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".

17. 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. The HO explained that it considered that the crucial indicators (although not necessarily the only ones) in relation to the complainant's request are: burden on the authority, unreasonable persistence, frequent or overlapping requests and scattergun approach.

18. The HO referred to the Commissioner's guidance on the application of section 14(1) paragraph 56 which states:

"A request which would 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."

19. The HO also pointed to paragraph 57 of the Commissioner's guidance in support of citing section 14(1), 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."

20. 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 present request because between 29 January and 30 March 2013 it had received 11 immigration-related requests from the complainant. The HO explained that the requests appeared to be related to the complainant's wife not being granted leave to stay in the UK. Furthermore, the HO also explained that the complainant had his own website, on which he discussed his wife's immigration status.
21. The HO also explained that on some days it received two to three requests from the complainant. For example on 30 January 2013 it received two requests from the complainant relating to immigration issues. The Commissioner notes that on 29 January 2013 the HO had received a request from the complainant regarding immigration issues.
22. The Commissioner notes there were a further five requests made by the complainant in February 2013 - all related to immigration issues - and another four requests (including the present request) were received in March 2013, all related to immigration issues. The Commissioner notes that the complainant had also requested three internal reviews during the two-month period in question.
23. The HO explained that the requests received were not straightforward and 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 solely with the complainant's requests.
24. The Commissioner also notes that in a request from the complainant on 14 February 2013 he stated that *"I feel that I need to reiterate my FOI request to you"*; he then quoted a request and went on to make a new related one.

Motive of the requester

25. The HO also 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.
26. The HO 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. It also confirmed that it had provided the complainant with guidance in response to earlier requests. However, the HO explained that it considered that the number and nature of the complainant's requests had become such that any legitimate purpose has been exceeded. It also stated that it believed that the FOIA was being used disproportionately.
27. 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.
28. Whilst the Commissioner understands that the complainant has concerns about his wife's immigration status, he accepts the HO's point that there are appeal procedures which can be pursued by the claimant and/or his wife.

Value or serious purpose

29. 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.
30. 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 as per the Commissioner's guidance.¹ The HO also

¹ 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 an idea of what might be revealed.

explained that it appeared that his aim was more to help his wife and others with regard to their immigration status, than to obtain information.

Conclusion

31. The Commissioner has considered the arguments put forward, together with the context in which the request was made and the evidence supplied. He is satisfied that the request of 30 March 2013 is vexatious. The Commissioner considers that the complainant's requests have placed a significant burden upon the HO's resources. He also considers that given that the main issue for the complainant appears to be his wife's immigration status, there are appeals processes which the complainant can follow. 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.
32. The Commissioner therefore considers that the HO has applied section 14(1) appropriately to the request of 30 March 2013.

Section 10

33. The complainant also complained about the length of time taken for the HO to deal with his request.
34. On 30 March 2013 the complainant wrote to the HO requesting information. The HO responded on 28 June 2013.
35. Section 10 Section 10(1) of FOIA states that:

"a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."
36. In order for the HO to have complied with the 20 day working limit set out in section 10 of the FOIA, it should have responded to the complainant promptly and no later than the twentieth working day after receipt. In this case that would have been 26 April 2013. However, the HO did not respond until 28 June 2013.
37. The Commissioner therefore considers that the HO has breached section 10(1) of FOIA. However, he also notes that he has found this request to be vexatious, not least because of the burden placed on the HO by the complainant's numerous other requests.

Right of appeal

38. 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

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

39. 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.
40. 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
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