

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2016

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

Decision (including any steps ordered)

1. The complainant has requested information about the documentation required by transgender people when applying for a UK passport. By the date of this notice the Home Office had not responded to the request.
2. The Commissioner's decision is that by failing to respond to the request, the Home Office breached sections 1(1) and 10(1) of the FOIA.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a response to the request under the FOIA by either complying with section 1(1) or issuing a valid refusal notice.
4. The Home Office 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 27 January 2016, the complainant wrote to the Home Office and requested information in the following terms:

"By way of the Freedom to Information Act, I would like to request for any information/existing policy concerning documents required by transgender dual nationals applying for a renewal of British passports,

other than that contained in Guidance: Foreign Documents and Additional information for transgender and transsexual customers.

I am particularly interested also in any policy - if any - that indicates the issuance of British passport may be dependent on identification documents from a foreign government as well as policy/information concerning trans dual nationals whereas the person cannot make any legal change to their gender marker on their non-UK passport and whether that may hinder their access to make change on their gender marker on their British passport."

6. The Home Office acknowledged receipt of the request the same day. However, despite the complainant sending a further email requesting a response on 19 February 2016 (which the Home Office also acknowledged receiving) the complainant did not receive a response to the request.

Scope of the case

7. The complainant contacted the Commissioner on 4 March 2016 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the Home Office 12 March 2016, reminding it of its obligations in respect of such requests and asking it to respond to the complainant within 10 working days.
9. On 1 April 2016 the complainant confirmed to the Commissioner that he had received neither a response to the request nor a refusal notice from the Home Office. The Commissioner wrote to the Home Office again on 11 April 2016, asking it to clarify by 18 April 2016 whether it had responded to the request. The Home Office did not respond.

Reasons for decision

10. Section 1(1) of the FOIA states that:

1(1) Any person making a request 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.

11. Section 10(1) of the 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.
12. From the information provided to the Commissioner it is evident that the Home Office did not respond to the complainant within the statutory timeframe in respect of this request.
13. Therefore, the Commissioner's decision is that the Home Office did not deal with the request for information in accordance with the FOIA. It breached sections 1(1) and 10(1) of the FOIA by failing to provide a substantive response to the request or a refusal notice within the statutory timeframe of 20 working days. As at paragraph 3, above, the Home Office is now required to respond to the request in accordance with the FOIA.

Other matters

14. As well as issuing this notice, the Commissioner has made a separate record of the failure by the Home Office to respond to the complainant's request. This issue may be revisited should evidence from other cases suggest that this is necessary.

Right of appeal

15. 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@hmcts.gsi.gov.uk

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

16. 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.
17. 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
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Wilmslow
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SK9 5AF