

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2017

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

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office regarding pending ILR applications due to on-going criminal cases for investigation.
2. The Commissioner's decision is that the Home Office has breached section 10(1) of the FOIA as it has failed to give a substantive response to this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Home Office must issue a response to the request in accordance with its obligations under the FOIA.
4. The public authority 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 23 January 2017, the complainant wrote to the Home Office and requested information in the following terms:

"Could you please provide the following information under the freedom of information act;

- 1. What is the policy of UKIV if there is a criminal case pending of the applicant who applied for ILR or any other visa category*
 - 2. What is the policy if the applicant has applied for ILR or any other visa prior to the criminal case has started or at the time of making ILR or any other visa application there were no criminal investigation or case has been started against the applicant, can his or her application still be refused or hold on this basis.*
 - 3. What is the policy if the applicant has applied for ILR or any other visa after the criminal investigation has started, does he or she needs to inform the home office about it while the criminal investigation or case is still pending, not reach to any conclusion yet?*
 - 4. How many applications for ILR put on hold due to the pending criminal investigation or cases from January, 2014 till December, 2016 please provide a quarterly breakdown.*
 - 5. Currently how many applications for ILR are pending for 2 years, 3 years, 4 years, 5 years and longer.*
 - 6. Can ILR or any other visa application be refused if the applicant has been handed over non-custodial sentence or suspended sentence, absolute discharge or conditional discharge, and fines?*
 - 7. How long can UKIV hold the ILR or any other visa application for applicant(s) whose criminal case(s) are pending in court?*
 - 8. Can the decision of holding ILR application depend on the seriousness of the on-going criminal case or regardless of this?*
- Furthermore I'll highly appreciate if you could answer the above points in simple language rather than referring to different policy documents which often use technical words; sometimes difficult to understand as a layman "*

6. The Home Office acknowledged the request on 23 January 2017.

Scope of the case

7. The complainant contacted the Commissioner on 19 May 2017 to complain about the way his request for information had been handled.
8. Following receipt of the complaint the Commissioner contacted the Home Office, reminding it of its responsibilities and asking it to respond to the complainant within 10 working days.
9. Despite this intervention the Home Office has failed to respond to the complainant.

Reasons for decision

10. Section 10(1) of FOIA/EIR states that

"Subject to subsections (2) and (3), 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."

11. As a response has not yet been provided the Commissioner finds that the Home Office breached section 10(1) in failing to respond within 20 working days.

Right of appeal

12. 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

13. 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.
14. 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

Alun Johnson
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