



Home Office

Shared Services  
Directorate  
2 Marsham Street  
London SW1P 4DF

020 7035 4848  
(switchboard)

[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

Mr Wayne Pearsall  
[request-148907-  
3e9740e3@whatdotheyknow.com](mailto:request-148907-3e9740e3@whatdotheyknow.com)

15 May 2013

Dear Mr Pearsall

**Freedom of Information request (our ref. 26321): internal review**

Thank you for your e-mail of 6 April 2013, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about certification of Applications.

I apologise for the delay in issuing this response. I have now completed the review. I have examined all the relevant papers, including the information that was withheld from you, and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed and assessed the reasons why information was withheld from you. I confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My main conclusion is that the original response was largely correct although the department failed to provide you with all the documentation you requested. The missing documentation has been attached to this response.

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your Fol request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Yours sincerely

**M Riddle**  
**Information Access Team**

Switchboard 020 7035 4848

E-mail [info.access@homeoffice.gsi.gov.uk](mailto:info.access@homeoffice.gsi.gov.uk)

# Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Wayne Pearsall (reference 26321)

**Responding Unit:** European Operational Policy Team - UK Border Agency (UKBA)

## Chronology

Original Fol request:	7/2/2013
Acknowledgement:	11/2/2013
UKBA response:	6/3/2013
Request for internal review:	6/4/2013

## Subject of request

1. On 7 February 2013, Mr Pearsall submitted a Freedom of Information request asking for the following information in reference to a Certificate of Application (COA):

*'1) all guidance issued to UKBA staff for the issuing of a COA.  
2) what a COA actually represents  
3) would an overstayer of a Visa still be issued with a COA  
4) does a COA confirm the right of an applicant to work  
5) if an overstayer is issued with a COA under EEA law, would that person then be allowed to seek employment  
6) How many COA's issued have confirmed the right to work of the applicant  
7) How many COA's have been unable to confirm the right to work of the applicant  
8) How many COA's have refused the applicant outright the right to work  
9) if any of 6 - 8 have been appealed and reissued altering the status, please provide these figures separately (IE: six COA's were originally issued without confirming the right, this was altered to confirm the right to work ETC)  
10) please provide guidance issued to the European office staff for the issue of whether to confirm a persons right to work or not.  
- Which persons have their right to work confirmed  
- which persons right to work cannot be confirmed  
- which persons right to work are refused ETC.'*

2. The request also included some clarification around the scope of the request and revisions should the cost limit under section 12 of the Act be incurred.

## The response by UKBA

3. Mr Pearsall was informed that questions 1, 6, 7, 8, 9 and 10 would be answered under the FOI Act. Information was released and included in the response to answer questions 1 and 10. Section 12 (cost limit) was engaged for questions 6 to 9.
4. Mr Pearsall was also informed that questions 2, 3, 4 and 5 were routine enquiries and were subsequently answered outside of the Act. Therefore the responses to these questions are not subject to an internal review.

## **Request for an internal review**

5. Mr Pearsall requested an internal review of the handling of his request. Specifically he believes some guidance was withheld.

*'The document attached in Annex A passes the application onto another party... and states not to issue a COA... surely this additional party has further guidance issued to them.*

*I would request a copy of such guidance...'*

6. The specific line in the released information that Mr Pearsall refers to stated: *'NB. If an application mentions 'Zambrano' refer immediately to Team Leader of NWEuro9 - DO NOT issue a COA'.*

## **Procedural issues**

7. The original request was received on 7 February 2013 and a response was issued on 6 March 2013. This represents a period of 19 working days between receipt of the request and the response being issued. This means that the response was inside the target deadline of 20 working days as specified in section 10(1) of the Act.
8. Mr Pearsall was informed in writing of the right to request an independent internal review of the handling of the request, as required by section 17(7)(a) of the Act. The response also informed Mr Pearsall of the right of complaint to the Information Commissioner, as set out in 17(7)(b) of the Act.

## **Consideration of the response**

9. Mr Pearsall believes the Department's response does not include all the information held by UKBA within the scope of the request. This has been the focus of this internal review.
10. I have been in contact with the unit which provided the response and can confirm that the Department holds additional guidance on COAs that was not considered to be within the scope of the original request.
11. Mr Pearsall's first question asked for *'all guidance issued to UKBA staff for the issuing of a COA'*. UKBA did not include two documents which were not considered to be directly applicable to the request, because they do not relate solely to the process of issuing a COA. This review has considered this interpretation and has decided that these two documents should be released. They can be found attached to this report.

## **Documents now released**

12. Both attached documents have had redactions made under sections 31(1)(e) (law enforcement) and 40(2) (personal information) of the Act. Section 31(1)(e) requires a public interest test, which is included in Annex A. Section 40(2) is an absolute exemption which does not require a public interest test.
13. Within the document "Pin 39 of 2012 – Zambrano" are two links to two documents that have not been redacted. These documents have not been released either. The reason for this is as follows:
- Notice 21-2012-Zambrano(2).doc - has already been released to Mr Pearsall as part of FOI case 26630. Therefore there is no reason to provide it again.
  - FormDRF1-Draft 1.2(clean).docx - this is an application form for persons to apply for a derivative residence card. It is already on the UKBA website and section 21 of

the Act applied. This is the relevant link:

<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/eea/drf.pdf>

14. Document “MQT 65 of 2011 Zambrano (revised Oct 2011)” is outdated guidance and was replaced by “PIN 39 of 2012”. It will be included in the response as it is information that is held, although no longer relevant.
15. Document “MQT 65 of 2011 Zambrano (revised oct 2011)” contains links to six template letters which have been redacted under section 31(1)(e). Although redacted for the reasons contained in Annex A, the following descriptions of the contents of these template letters may be of use.
  - Letter 1 is a certificate of application which confirms a person’s receipt of application and confirms a corresponding right to work.
  - Letter 2 explains that further original documents are required for the application for a derivative residence.
  - Letter 3 is a rejection letter where insufficient evidence has been provided that the application was potentially in scope of the Zambrano judgment
  - Letter 4 is a replacement for a previously issued COA
  - Letter 5 returns documents to the applicant where the applicant is not in scope of the Zambrano judgment
  - Letter 6 is a template letter for responses to PAP/JR proceedings in relation to Zambrano.

## **Section 12**

16. Section 12 (cost) was engaged in relation to questions six to nine. Mr Pearsall has not objected to this and therefore no review of the cost limit being engaged has been undertaken. However, it is worth noting that the Information Commissioner has previously advised that if section 12 (cost) of the Act applies to any part of a request; it can and should be engaged to cover the entire request. As such UKBA would have been within its rights to apply the cost limit to the entire request.

## **Vexatious requests**

17. Section 14 of the Act states:

*Vexatious or repeated requests.*

*(1)Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

*(2)Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.*

18. Having examined Mr Pearsall’s other recent requests in conjunction with this review, I feel that it is fair to point out that the subject matter, volume, and frequency of his requests (considering the number of requests submitted in such a small time frame) is such that they are approaching the criteria required to regard them as vexatious. It is possible that further requests from Mr Pearsall will be refused under this section of the Act.

## **Conclusion**

19. The Department was not in breach of section 10(1) of the Act in relation to the timeliness of the response.
20. The Department has complied with section 1(1)(a) of the Act by confirming that the requested information is held.
21. The Department failed to comply with section 1(1)(b) of the Act by not releasing all the guidance documentation.
22. Additional information has been released as part of this internal review, Sections 31(1)(e) and 40(2) has been engaged.
23. I am satisfied there was no procedural breach of section 17(7)(a) and 17(7)(b).

**Information Access Team**  
**Home Office**  
**15/05/2013**

## **Annex A – Section 31(1)(e) Public Interest Test**

### **Public interest test**

Some of the exemptions in the FOI Act, referred to as ‘qualified exemptions’, are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information, or the considerations for and against the requirement to say whether the information requested is held or not. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The ‘public interest’ is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. The ‘right to know’ must be balanced against the need to enable effective government and to serve the best interests of the public.

The FOI Act is ‘applicant blind’. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

#### Prejudice test

If we were to disclose this information it could substantially prejudice the operation of our immigration controls. This is because disclosure may enable individual immigration offenders to produce fraudulent correspondence appearing to be issued by the UK Border Agency.

#### Considerations in favour of disclosing the information

There is a public interest in disclosing the information as it will increase the transparency of the work of UKBA and the Immigration Service. Transparency in this matter would enhance knowledge of the way UKBA operates its policy and encourages public confidence in the systems and processes in place.

#### Considerations in favour withholding the information

There is a strong public interest in ensuring that those seeking to evade immigration controls through producing fraudulent documentation, in order access services and employment in the UK illegally, are unable to do so. Through being able to access the template letter, such offenders may be able to produce fraudulent documentation which assists them in circumventing proper immigration controls.

We conclude that the balance of the public interest lies in withholding the information.

## **Annex B – Original Request in full**

Dear UK Border Agency,

Further to the information request (under the FOI act 2000) made by "Zee" (the known name for a person who applied for information from yourself) on 7th Jan 2013

---quote---

Can you please explain what a COA is?

Does anyone who submits an EEA application on the basis of being a family member of an EU national excersising his treaty rights automatically receive one?

Even if that someone is an overstayer?

Would a COA enable an overstayer to temporarily seek employment in the UK?

Many thanks in advance.

---end quote---

(located here: <http://www.whatdotheyknow.com/request/re...>)

I am writing to inform you that you have failed to answer the questions raised in this request.

If there was a problem understanding the request of the person who asked for information which you hold on the "COA" (also commonly known as a "Certificate of Application"), Can you please provide all information you have available in reference to a Certificate of Application.

The information requested is (but not entirely limited to:

- 1) all guidance issued to UKBA staff for the issuing of a COA.
- 2) what a COA actually represents
- 3) would an overstayer of a Visa still be issued with a COA
- 4) does a COA confirm the right of an applicant to work
- 5) if an overstayer is issued with a COA under EEA law, would that person then be allowed to seek employment

With my wife being issued a COA stating "At this point we are unable to confirm your right to work within the UK" I am aware that A COA can either Confirm the right of the person to work, or will be unable to confirm the right of the person to work.

Can you please provide information on the following:

- 6) How many COA's issued have confirmed the right to work of the applicant
- 7) How many COA's have been unable to confirm the right to work of the applicant
- 8) How many COA's have refused the applicant outright the right to work
- 9) if any of 6 - 8 have been appealed and reissued altering the status, please provide these figures seperately (IE: six COA's were originally issued without confirming the right, this was altered to confirm the right to work ETC)

I would like the information to disclose ALL issues of COA from the very first certificate issued.

should this cause problems with costings, then I would revise my request to cover the last two full



years (I will allow you to choose either Annual, or Financial, which ever is easier for yourselves, but please state the dates represented)

and also,

10) please provide guidance issued to the European office staff for the issue of whether to confirm a persons right to work or not.

- Which persons have their right to work confirmed
- which persons right to work cannot be confirmed
- which persons right to work are refused ETC.

Thank you very much.

Yours faithfully,

## Annex C – Original Response in full

Dear Mr. Pearsall,

Thank you for your e-mail of 7 February, in which you ask for information relating to certificates of application (CoAs). Part of your request is being handled as a request for information under the Freedom of Information Act 2000, and part of your request is being handled as a routine enquiry as it does not request specific information held by the UK Border Agency.

You have requested the following information;

“All information you have available in reference to a Certificate of Application.

The information requested is (but not entirely limited to):

- 1) all guidance issued to UKBA staff for the issuing of a COA.
- 2) what a COA actually represents
- 3) would an overstayer of a Visa still be issued with a COA
- 4) does a COA confirm the right of an applicant to work
- 5) if an overstayer is issued with a COA under EEA law, would that person then be allowed to seek employment
- 6) How many COA's issued have confirmed the right to work of the applicant
- 7) How many COA's have been unable to confirm the right to work of the applicant
- 8) How many COA's have refused the applicant outright the right to work
- 9) if any of 6 - 8 have been appealed and reissued altering the status, please provide these figures separately (IE: six COA's were originally issued without confirming the right, this was altered to confirm the right to work ETC)

I would like the information to disclose ALL issues of COA from the very first certificate issued. Should this cause problems with costings, then I would revise my request to cover the last two full years (I will allow you to choose either Annual, or Financial, which ever is easier for yourselves, but please state the dates represented)

and also,

10) please provide guidance issued to the European office staff for the issue of whether to confirm a persons right to work or not.

- Which persons have their right to work confirmed
- which persons right to work cannot be confirmed
- which persons right to work are refused ETC.”

You have also referred to a request for information made by another individual and have quoted that person’s request in your email. Please be advised that this response will deal with your enquiry only and we will not correspond with you in respect of a request made by another individual. It is open to the individual concerned to contact the UK Border Agency directly if they do not consider that their request has been dealt with satisfactorily. Questions 1, 6, 7, 8, 9, and 10 of your request have been treated as requests for information under the Freedom of Information Act.

In question 1, you have requested guidance issued to UK Border Agency staff on the subject of issuing certificates of application. I can confirm that the UK Border Agency holds an internal „desk guide” for UK Border Agency staff for use in deciding whether to issue a CoA, and whether any CoA issued will confirm a right to reside and work in the UK while

awaiting a decision (a „full“ CoA) or simply a right to reside (a „short“ CoA). I have included this document at Annex A of this response.

Questions 6 to 9 request information regarding CoAs issued by the UK Border Agency and statistics regarding the content of CoAs issued. Under section 12 of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it. This is because details around the issue and content of CoAs are not held in a reportable form in the UK Border Agency database and therefore we would have to search through each record manually to obtain the information.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information and preparing the response can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

In this case, I am unable to advise of a way in which you could refine this part of your request in order to bring it within the cost limit for a freedom of information request, as even if your request were limited to a shorter period of time as you have suggested, this would still almost certainly exceed the cost limit.

Furthermore, question 9 of your request refers to appeals against a decision to issue a „short“ CoA. It should be noted that the issuing of a „full“ or „short“ CoA does not constitute a decision or outcome on an application and as such does not attract a right of appeal.

In question 10 of your request, you have asked for „guidance issued to the European office staff for the issue of whether to confirm a persons right to work or not.“ I have provided the desk top guide for CoAs in Annex A of this letter as set out in my response to question 1 of your request. I can confirm that this is all the guidance held by the UK Border Agency which advises on whether a CoA will confirm a right of a person to take employment while their application for a document confirming a right of residence under the Immigration (European Economic Area) Regulations 2006 (as amended) is under consideration.

Questions 2, 3, 4 and 5 of your request are routine enquiries and have therefore not been dealt with under the Freedom of Information Act. The UK Border Agency’s response to your routine enquiries is set out at Annex B of this letter.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference FOI 26321. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team  
Home Office Ground Floor, Seacole Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [FOIRequests@homeoffice.gsi.gov.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely  
European Operational Policy Team  
UK Border Agency

## DESK TOP GUIDE FOR ISSUING COAs

**NB. If an application mentions 'Zambrano' refer immediately to Team Leader of NWEuro9 - DO NOT issue a COA.**

Check pouch contains:

Evidence of valid ID for applicant **and** sponsor

Current national passport / EEA Identity card

– NB EEA Alien's passports are NOT evidence of EEA nationality

### **Evidence of relationship**

Marriage certificates, birth certificates, adoption certificates-Only direct family members are entitled to a full COA ie spouse/civil partner, children/ parents, grand-parents of the EEA national or of his/her spouse / civil partner.

-This includes stepchildren or adopted children provided that the adoption is recognised by the UK, and step parents.

-In the case of **EEA national students**, only their spouse / civil partner and dependent children are entitled to a full COA.

### **Evidence of exercising Treaty Rights**

As a worker – pay slips, P60's etc,

As a student – letter from college, sickness insurance or EHIC card

As a self employed person – HMRC letter, Tax returns, advertising

As a self –sufficient person – bank statements, sickness insurance or EHIC card

If **all** three are present issue **full COA**

If only some of the above are present issue a **short COA**

Minute CID notes to say one of the following:

Full COA issued to representative

Full COA issued to applicant

Short COA issued to representative

Short COA issued to applicant

## **2) what a COA actually represents**

Where a non-EEA national applies for a document as the family member of an EEA national confirming a right of residence under the Immigration (European Economic Area) Regulations 2006 („the Regulations“) a decision will be made on their application within 6 months of the date of application.

The UK Border Agency issues a Certificate of Application or „CoA“ to applicants who have submitted a valid application. Depending on the level of evidence submitted, the applicant will be issued with either a „full“ CoA confirming a right to work in the UK while their application is outstanding) or a „short“ CoA (confirming receipt of the application only).

Short CoAs are also issued to persons who are applying as an „extended family member“, as such persons do not have an automatic right of residence in the UK and therefore will not have a right to take employment until such a time as they are issued with a document under the Regulations.

A CoA does not represent confirmation that an applicant has a right of residence under EU law and does not constitute a decision or outcome on that application.

## **3) would an overstayer of a Visa still be issued with a COA?**

A person who has overstayed a previous grant of leave to enter or remain under the Immigration Rules and who has subsequently acquired a right of residence under the Regulations will be issued a CoA where they meet the relevant evidence requirements regardless of their previous immigration status.

## **4) does a COA confirm the right of an applicant to work?**

This will depend on whether the CoA issued is a full or short CoA. As set out above, a full CoA provides evidence to prospective employers that the applicant may take employment while the application is under consideration, whereas a short CoA does not.

## **5) if an overstayer is issued with a COA under EEA law, would that person then be allowed to seek employment?**

A person who is issued with a full CoA confirming their right to take employment while their application is under consideration will be able to seek employment while they are awaiting a decision on their application, regardless of their previous immigration status. A person who is issued with a short certificate of application may not take employment in the UK until such a time as they are issued with a document confirming a right of residence under the Regulations.

## **Annex D – Internal Review request**

Dear UK Border Agency,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of UK Border Agency's handling of my FOI request 'Certificate of Application'. (your ref 26231)

I feel that the terms of the FOI Act have not been observed fully... and that not all information requested has been disclosed...

The document attached in Annex A passes the application onto another party... and states not to issue a COA... surely this additional party has further guidance issued to them.

I would request a copy of such guidance...

And request that this FOI request is looked upon again, as i feel that UKBA has withheld vital information in the response to my FOI request

A full history of my FOI request and all correspondence is available on the Internet at this address: [http://www.whatdotheyknow.com/request/certificate\\_of\\_application\\_5](http://www.whatdotheyknow.com/request/certificate_of_application_5)

Yours faithfully,