



Home Office

Shared Services
Directorate
2 Marsham Street
London SW1P 4DF

020 7035 4848
(switchboard)

www.homeoffice.gov.uk

Mr Wayne Pearsall
[request-151507-
14d8ec37@whatdotheyknow.com](#)

10 June 2013

Dear Mr Pearsall

Freedom of Information request (our ref. 26630): internal review

Thank you for your e-mails of 9 April 2013, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about information held concerning the derivative right to reside.

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 correct. You were provided with the information deemed within the scope of your request and in most instances the redactions were correctly applied. Instances where redactions were incorrectly replied are detailed in the attached report.

I am releasing some additional information to you. You expressed an interest in this material in your internal review request. Please note that this information was deemed out of scope of your original request and has been confirmed as out of scope by this internal review. We are releasing it to you in accordance with section 16 (advice and assistance) of the Act. Details of why this information was out of scope are included in the attached report.

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

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Wayne Pearsall (reference 26630)

Responding Unit: European Operational Policy Team – Former UK Border Agency (UKBA)

Chronology

Original Fol request:	28/2/2013
Acknowledgement:	4/3/2013
UKBA response:	9/4/2013
Request for internal review:	9/4/2013

Subject of request

1. On 28 February 2013, Mr Pearsall submitted a Freedom of Information request within two separate pieces of correspondence asking for the following:

The first correspondence asked

- a copy of all legislation relating to a persons derivative right to reside.
- all information in relation to who actually qualifies for a derivative right of residence.

The request is clarified as asking for information is in relation to the non-eea national mother of two extremely young children (3 and six months) who are british citizens.

The second correspondence also asked

- a copy of all guidance, in relation to the derivative right of residence and
- how ukba staff are made aware of a persons right to reside if they have a dependant British child.

The response by UKBA

2. The response cited section 21 of the Act and directed Mr Pearsall to internet links where the legislation can be found in the public domain. Section 21 was also engaged to direct Mr Pearsall to the UKBA guidance issued to entry clearance staff on the issuing of EEA Family Permits, including to persons claiming a derivative right of residence.
3. The response also released six European Operational Policy Notices (EOPNs) with some minor redactions under section 40(2).

Request for an internal review

4. Mr Pearsall requested an internal review of the handling of his request. Over 5 separate pieces of correspondence he identified a number of concerns with the response.

Procedural issues

5. The original request was received on 28 February 2013 and a response was issued on 9 April 2013. This represents a period of 26 working days between receipt of the request

and the response being issued. This means that the response was outside the target deadline of 20 working days as specified in section 10(1) of the Act.

6. 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

7. This review will examine the issues raised by Mr Pearsall. I have been in contact with the unit which handled the original response.

Guidance documentation

8. Mr Pearsall sought confirmation that all guidance held by UKBA in relation to the derivative right of residence had been provided to him, not just that held by the European Operational Policy Team.
9. This review confirms that all relevant internal guidance held by UKBA was provided. There are other guidance documents held by UKBA on Zambrano applications and the derivative right of residence, but these are out of scope. This is because they focus on the processing of applications or the interplay between Zambrano cases and Article 8 in appeals cases and do not directly relate to guidance on *who qualifies for a derivative right*. These documents do however fall within the scope of two other FOI requests submitted by Mr Pearsall.
10. Mr Pearsall queried in his internal review request why seminar course training material was not included in the response. This was because UKBA had deemed it out of scope. As the main method of informing staff of how to consider applications for a derivative right to reside is through the policy notices (which were released), UKBA classed the seminar course training material as out of scope.
11. I consider that the training documentation should have been included in the original response, as it is guidance and within scope of the original request. It is provided with this report. Section 35(1)(a) has been engaged in relation to some information and the required public interest test is included in Annex A.
12. There may be additional guidance created locally in UKBA that the European Operational Policy Team is unaware of. UKBA estimates that to perform a thorough search of all UKBA locations including all ports to establish whether this is so would exceed the cost limit under section 12.

European Operational Policy Notices

13. Mr Pearsall sought an explanation as to why the European Operational Policy Notice 11/2012 was not released, arguing that one of the documents released refers to it and therefore it is relevant guidance.
14. The European Operational Policy Notice 11/2012 deals with all appeal rights across the EEA Regulations with a small section referring to appeal rights for derivative applications. Mr Pearsall's request asked for all guidance relating to who *qualifies* for derivative rights. Guidance on appeal rights does not provide any information on how a person qualifies in the first instance for a derivative right. Therefore this Policy notice is out of scope.

15. I can confirm that other than European Operational Policy notice 11/2012 all other policy notices relating to derivative rights have already been released to Mr Pearsall.

Unanswered question

16. Mr Pearsall believes that one of his questions remains unanswered. He asked *"how UKBA staff are made aware of a persons right to reside if they have a dependant British child"*. As previously stated UKBA staff are made aware of how to consider applications for a derivative right to reside from internally cascaded policy notices and training on this issue where required. The information that is used to educate UKBA staff was released in the response to the request. So the question was answered, just not overtly explained.

Redactions

17. The remainder of Mr Pearsall's internal review request focuses on redactions made in the documents released in the response. Firstly Mr Pearsall asked for an explanation as to why a link on page 30 was redacted and under what exemption?

"For further details on how to assess whether a person's presence in the UK is conducive to the public good, please see the following link: [LINK REDACTED]"

18. The link in this instance was redacted as it was deemed out of scope. The guidance located at the link is not specific to derivative rights but rather explains the Home Office's position in relation to deportation/exclusion of nationals on conduciveness grounds.

19. Mr Pearsall's internal review request asks that the *guidance issued to UKBA on how to judge if somebody's presence in the UK is conducive to the public good* be released. Mr Pearsall has also submitted a fresh request for this information, which has been handled separately.

20. Mr Pearsall also sought an explanation as to why some email addresses had been redacted, arguing that they should not be classed as personal information.

21. The redactions in this section consisted of two staff names and their direct telephone numbers and one group email mailbox. I can confirm that the group mailbox should be released as it is not personal information. The group mailbox which was incorrectly redacted was EuropeanOperational@homeoffice.gsi.gov.uk. However, the redactions and application of section 40(2) to the staff names and telephone numbers was correct.

22. Mr Pearsall also asked for confirmation if the redacted email addresses were any of the eight which he listed.

23. As explained above, the redacted group mailbox was EuropeanOperational@homeoffice.gsi.gov.uk. This was not one of the eight Mr Pearsall listed. Furthermore I can confirm that none of the redacted email addresses were any of the eight included in the internal review request.

Internal Review deadline

24. Mr Pearsall also disputed the deadline for completion of his internal review request, arguing that it was submitted on 28 March 2013 and so the deadline for response should be 26 April not 8 May as acknowledged.

25. A full internal review can only be carried out once the final response has been issued, which in this case was on 9 April. The internal review request of 28 March was therefore in effect a time complaint, which has been covered in this internal review

Correspondence

26. Mr Pearsall has in numerous instances submitted a request for information or internal review and then proceeded to submit several pieces of follow up correspondence that clarifies or amends the scope of the original request (this being one such case). It can sometimes be difficult to ensure that such subsequent correspondence is married up to the correct requests. This is compounded by the volume of requests Mr Pearsall submits at the same time.

Vexatious requests

27. 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.

28. I consider that the subject matter, volume, and frequency of Mr Pearsall's recent requests are such that there are strong grounds for regarding any further similar requests as vexatious.

Conclusion

29. The Department was in breach of section 10(1) of the Act in relation to the timeliness of the response.
30. The Department has complied with section 1(1)(a) of the Act by confirming that the requested information is held.
31. The Department released the requested information as determined by the scope of the request. However the Department failed to comply with section 1(1)(b) of the Act by not releasing the seminar training documentation.
32. The original decision to withhold information under section 40(2) of the Act was mostly correct.
33. I am satisfied there was no procedural breach of section 17(7) (a) and 17(7) (b).
- .

Information Access Team
Home Office
10 June 2013

Annex A – Section 35(1)(a) 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.

Considerations in favour of disclosing the information

There is a public interest in releasing the information concerned as the issue of migration and its impact on the UK is of clear public significance and transparency in this matter would enhance knowledge of the way policy is developed. There is also a public interest in being able to assess the quality of advice being used by Home Office Ministers and their officials, and any subsequent decision making which arises from that advice.

Considerations in favour withholding the information

There is a clear public interest in withholding the information concerned as both Ministers and officials need to be able to conduct rigorous and candid risk assessments of the impacts of migration on UK society and have the space to consider the reasons for and against developing policies. Both Ministers and officials also need room to develop policy in this sensitive area of public concern, without the fear that proposals will be held up to ridicule while initial policy is being formulated in this area. Disclosure of the information concerned would, furthermore, not be in the public interest as it would harm the policy-making process for Home Office officials in future when developing policies in this area. This is because disclosure could lead to officials in the future not challenging ideas when formulating, and this could lead in the longer term to poorer decision making.

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

Annex B – Original Request in full

Dear UK Border Agency,

I am aware that UKBA issue many forms of guidance in relation to a persons legal right to reside / work in the uk.

for example: <http://www.ukba.homeoffice.gov.uk/siteco...>

Can you please provide (as per FOI 2000) a copy of all legislation relating to a persons derivative right to reside.

i see from the following document: <http://www.ukba.homeoffice.gov.uk/siteco...> that a registration of a derivative right to reside is optional.

however, can you please provide me all information in relation to who actually qualifies for a derivative right of residence.

my particular query is in relation to the non-eea national mother of two extremely young children (3 and six months) who are british citizens.

Yours faithfully,

Annex C – Follow up clarification in full

Dear UK Border Agency,

further to my previous message, <http://www.whatdotheyknow.com/request/de...>

please also issue a copy of all guidance, in relation to the Derivative right of residence...

and how ukba staff are made aware of a persons right to reside if they have a dependant british child.

Yours faithfully,

Annex D – Response in full

Dear Mr. Pearsall,

Thank you for your e-mail of 28 February, in which you ask for guidance relating to derivative rights of residence under European Union (EU) law. Your request is being handled as a request for information under the Freedom of Information Act 2000.

You have requested the following information:

- Can you please provide (as per FOI 2000) a copy of all legislation relating to a persons derivative right to reside.
- Can you please provide me all information in relation to who actually qualifies for a derivative right of residence.
- my particular query is in relation to the non-eea national mother of two extremely young children (3 and six months) who are British citizens.

“Derivative rights” are rights of residence which derive from EU law other than Directive 2004/38/EC (the „free movement” Directive) and have been established by case law handed down by the Court of Justice of the European Union (ECJ). The relevant legislation for persons with a derivative right of residence under EU law is regulation 15A of the Immigration (European Economic Area) Regulations 2006 (as amended).

Provision for the issuing of a document confirming a derivative right of residence under these Regulations was made by two amending Regulations in July and November 2012. You can find the 2006 Regulations and subsequent amending Regulations using the following links:

Immigration (European Economic Area) Regulations 2006:
<http://www.legislation.gov.uk/ukxi/2006/1003/contents/made>

Immigration (European Economic Area) (Amendment) Regulations 2009:
<http://www.legislation.gov.uk/ukxi/2009/1117/contents/made>

Immigration (European Economic Area) (Amendment) Regulations 2011:
<http://www.legislation.gov.uk/ukxi/2011/1247/made>

Immigration (European Economic Area) (Amendment) Regulations 2012:
<http://www.legislation.gov.uk/ukxi/2012/1547/made>

Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2012:
<http://www.legislation.gov.uk/ukxi/2012/2560/made>

The UK Border Agency issues guidance to entry clearance staff on the issuing of EEA Family Permits, including to persons claiming a derivative right of residence. You can find this guidance on the UK Border Agency website at the following address:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/eun/>. Please note that sections of this guidance relating to applications from primary carers of self-sufficient EEA national children („*Chen*’ cases) are currently under review.

Section 21 of the Freedom of Information Act exempts the Home Office from having to provide you with this information, because it is already reasonably accessible. You can access the legislation you have requested using the internet links above. If you have any difficulties in accessing this information at the source which I have indicated, please contact me again.

I can confirm that the UK Border Agency holds internal guidance for caseworkers assessing applications on the basis of derivative rights of residence. The guidance held relates to derivative rights in the following categories:

- Primary carers of British citizens („*Zambrano*’ cases)
- Primary carers of self-sufficient EEA national children („*Chen*’ cases)
- Children of an EEA national worker or former worker where the child is in education in the UK („*Ibrahim/Teixeira*’ cases)
- Primary carers of children of an EEA national worker or former worker where the child is in education in the UK („*Ibrahim/Teixeira*’ cases)
- Dependent children of primary carers who have a derivative right of residence in the UK.

I have released six European Operational Policy Notices (EOPNs) to you in Annexes A-F to this response. These notices provide guidance for European caseworkers when assessing whether a person has a derivative right of residence. The notices released are:

13/2011 - Implementation of the Zambrano Judgement (Annex A)

07/2012 - Ibrahim/Teixeira (Annex B)

07/2012 - Ibrahim/Teixeira (revised) (Annex C)

08/2012 - Chen (Annex D)

08/2012 - Chen (revised) (Annex E)

21/2012 - Zambrano (Annex F)

Please note that the documents which have been released have had some of the information within them redacted as it falls to be exempted from release under Section 40(2) of the Act, as it refers to personal information. The exempted sections are marked as redacted.

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 26630. 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

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

The 45 pages of information released within the annexes of this response can be found at this location: -

<https://www.whatdotheyknow.com/request/151507/response/376967/attach/2/FOI%20response%2026630%202013%2004%2009%20FINAL.pdf>

Annex E – Internal Review request (part 1 of 5) received 9th April 2013

Dear European Operational Policy Enquiries,

Thank you for the response. As this is your "Final response" please can you indicate when the internal review will be conducted that I requested previously...

Please also confirm... I my request was for all internal guidance on a derivative right to reside... Is this all of the guidance which is available and held by UKBA?

I note that my FOI request asked for:

and how ukba staff are made aware of a persons right to reside if they have a dependant british child

I note that this section of my FOI request was ignored.

I am well aware that UKBA hold training seminars (as evidenced in my other FOI requests to yourself.

Information relating to this section of my request would of course, include all training documents issued to case workers ETC.

I Note: The documents requested were not only to Euro operations team, but to UKBA staff in general. - this includes staff at ports ETC.

So please conduct the internal review and explain why you did not implement the legislation as required...

NOTE: My request for internal review was posted
#at 14:52 on 28th march. as evidenced by the independant website:
<https://www.whatdotheyknow.com/details/r...>

my full request is visible here:
<https://www.whatdotheyknow.com/request/d...>

your ref: 26630

Yours sincerely,

Annex F – Internal Review request (part 2 of 5) received 9th April 2013

Dear European Operational Policy Enquiries,

additionally:

"For further details on how to assess whether a person's presence in the UK is conducive to the public good, please see the following link: [LINK REDACTED]" on page 30

please supply guidance issued to ukba on how to judge if somebody's presence in the uk is conducive to the public good... etc...

surely this sort of information was the intended goal of the FOI Act. The people of the UK have the right to know what the government decides is to be considered to keep them safe from people etc.

either way, you have not explained the reason for the redaction, as a link does not constitute as personal information.

Yours sincerely,

Annex G – Internal Review request (part 3 of 5) received 9th April 2013

Dear FOI Requests,

As already highlighted to yourselves, the request for internal review of my FOI "response" 26630 was posted to yourselves on the 28th march by email - full correspondance avail here:

<https://www.whatdotheyknow.com/request/d...>

history of events are available here:

<https://www.whatdotheyknow.com/details/r...>

therefore 20 working days is much sooner than the 8th may as you claim. - is this another case in which I am required to raise a complaint with the information commissioner?

if ukba cannot follow their own guidelines, then im sure it would be better to simply scrap your own internal review policy and the complainant complain directly to the ICO.

I think you will find that 20 working days would result in a reply being required by 26th April 2013.
(considering that the period had two public holidays and eight weekend days).

Yours sincerely,

Annex H – Internal Review request (part 4 of 5) received 9th April 2013

Dear FOI Requests,

RE: 26630,

Additionally...

also on page 30...

"35. Any policy enquiries on this notice should be addressed to [REDACTED] or [REDACTED], or to the European Operational Policy inbox: [REDACTED]"

Why has the email address been redacted? This is not personal information... and this redaction has not been given a reason in the FOI response... - ALL REDACTIONS MUST SITE THE REASON AND EXCEMPTIONS...

I AM WELL AWARE OF THE EURO MAILBOX, AS ARE MANY OTHERS...

Please confirm if this email address is one of the following:

"[[email address](#)]" <[email address](#)>; "[[email address](#)]" <[email address](#)>

"[[email address](#)]" <[email address](#)>; "[[email address](#)]" <[email address](#)>;

I gained all of these email addresses from the UKBA website, therefore you have no legal basis on which to redact the email addresses within a FOI response...

Im sure many other things will pop up as i read the response... SO perhaps you would like to read the response fully before replying with the FOI Review... and correct the errors in the response...

Yours sincerely,

Annex I – Internal Review request (part 5 of 5) received 9th April 2013

Dear FOI Requests,

I keep reading, and my replies keep on coming from it...

"Please refer to European Operational Policy Notice 11/2012 for further guidance on appeal rights against a refusal to issue a document confirming a derivative right of admission."

surely this means that your FOI reply was not satisfactory, as clearly further information / guidance is available within UKBA..

Perhaps this can aid my request:

Please supply a copy off all European Operational Policy Notice's which relate to the term "Derivative Right"

Yours sincerely,