



Home Office

Shared Services
Directorate
2 Marsham Street
London SW1P 4DF

020 7035 4848
(switchboard)

www.homeoffice.gov.uk

Mr Wayne Pearsall

9 July 2013

Dear Mr Pearsall,

Freedom of Information requests (our refs. 27333, 27426, 27193, 27206, 27448, 27391, 27390, 27068, 27215, 27429, 27011, 27634): internal review

Thank you for your e-mails in which you asked for internal reviews of our responses to your Freedom of Information (FOI) requests which focused on immigration regulations relating to the UK and Europe. In a significant number of requests you asked for all guidance/ policy/ complaints procedures/ memos and all documents on the topic. Some requests are regarding how the Home Office (HO), in particular, how the former United Kingdom Border Agency, manages its internal processes and procedures.

I have now completed the review. I have examined all the relevant papers, and have considered whether the correct procedures were followed. I confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My conclusion is that the original responses were correct and that section 14(1) of the FOI Act was applied correctly. Section 14(1) of the Act provides that the Department does not need to comply with a FOI request if it is considered as vexatious. If we consider any future requests on this topic to be vexatious, we will not respond to them.

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your FOI 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

J Hussain
Information Access Team

Information Access Team

Switchboard 020 7035 4848
E-mail info.access@homeoffice.gsi.gov.uk

Internal review of responses to requests under the Freedom of Information (FOI) Act 2000 by W Pearsall.

Responding Units: Information Management Service (IMS) and the former United Kingdom Border Agency (former UKBA)

Chronology

Initial FOI requests received between:	January to May 2013
Former UKBA and IMS' responses sent between:	February to June 2013
Request for internal reviews received between:	February to June 2013

Subject of requests

1. Mr Pearsall submitted in excess of 50 requests between 30 January and 23 May 2013, the majority relating to: European Economic Area (EEA) family permits, UK immigration rules and regulations, Right to reside in the UK, Settlement in the UK, Zambrano, details regarding the job description of Rob Whiteman (former Director General of Operational Systems Transformation in the Home Office) and Fee remissions.

The responses by former UKBA and IMS

2. The former UKBA and IMS provided substantive responses to Mr Pearsall stating that some of his requests were vexatious. Specifically, the responding units refused to comply with 12 of Mr Pearsall's requests because they were vexatious.

Mr Pearsall's request for an internal review

3. Mr Pearsall submitted requests for internal reviews for each of the above requests, questioning the application of s.14(1).

Procedural issues

4. Mr Pearsall's initial requests, that are the subject of this review, are recorded as having been received between April and May 2013. In line with section 10(1) of the Act Mr Pearsall was due responses to his requests within 20 working days following receipt of his information requests. The former UKBA was unable to respond to some of these requests within the 20 working days and as such were in breach of section 10(1) of the Act. However, it should be noted that the volume of Mr Pearsall's requests has placed a burden on the authority, to the extent that responding within deadlines was difficult.

5. Mr Pearsall was informed of the right to independent internal reviews into the handling of the requests, as is required by section 17(7)(a) of the Act. The responses also informed Mr Pearsall of the right of complaint to the Information Commissioner, as specified by section 17(7)(b) of the Act.

Consideration of the response

6. IMS and former UKBA cited section 14 for the requests which it considered to be vexatious requests that were placing a significant burden on the HO. Section 14 can be invoked to protect public authorities from those that may abuse the right to request information. The Act states:

14(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.

7. A public authority is not obliged to comply with a request for information under section 1(1) of the Act if the request is deemed vexatious. Section 14 is similar to an absolute exemption in that we do not have to consider the public interest test around its application.

8. According to guidance from the Information Commissioner's Office (ICO) a key question in deeming a request vexatious, is whether the request is 'likely to cause distress, disruption or irritation, without any proper or justified cause':

"The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of [Information Commissioner vs Devon County Council & Dransfield \[2012\]](#) UKUT 440 (AAC), (28 January 2013) when it defined the purpose of section 14 as follows; 'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...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...' (paragraph 10)."

9. The same case also states:

'There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA'.

10. To help public authorities make this decision the ICO advises us to evaluate the following factors when deciding whether a request should be treated as vexatious:

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- Disproportionate effort
- No obvious intent to obtain information
- Futile requests
- Frivolous requests

11. Using the factors above, I will determine whether section 14(1) was applied appropriately to these FOI requests. The ICO state that 'to judge a request vexatious, you

should usually be able to make relatively strong arguments under more than one of these headings.'

12. Firstly, I will look at the context and history of the requests from Mr Pearsall.

Context and history

13. The ICO states that all circumstances need to be taken in to consideration to reach a judgement on whether a request is vexatious. With this in mind, it is right to consider the context and history of Mr Pearsall's requests. Between 30 January and 23 May 2013 Mr Pearsall submitted in excess of 50 FOI requests to the Home Office about immigration laws of the UK and Europe, and issues relating to his wife's immigration status. Having been provided with substantive responses, Mr Pearsall has then gone on to make further subsequent similar requests on the same topics in a very short time.

14. I conclude that the FOI requests from Mr Pearsall - which number around 50 within 4 months, including approximately 30 in the month of April 2013 alone - have taken on a vexatious quality: They mostly relate to immigration rules and regulations – such as EEA family permits, family members of EEA nationals, UK immigration rules and regulations, right to reside in the UK, settlement in the UK, Zambrano fee remissions etc. - are directly or indirectly related to his wife's immigration status, and have become obsessive in nature.

15. Using the factors listed at point 10 above, I will now explain this decision in more detail.

Frequent or overlapping requests

16. Mr Pearsall submitted 4 requests for legislation and guidance regarding 'Zambrano' between 2 April and 8 April, and a further two requests on 22 and 29 April 2013 regarding the same issue. Mr Pearsall has submitted frequent requests for similar information, 9 requests in April 2013 were received from Mr Pearsall relating to immigration legislation, before the Department had the opportunity to respond to outstanding requests. The pattern of Mr Pearsall's requests do take on a vexatious nature.

Burden on the Authority

17. Mr Pearsall submitted 50 FOI requests to the Home Office in 4 months. The requests all relate directly or indirectly to UK and European immigration laws and the relevant legislation and internal guidance. This has created a disproportionate amount of work in dealing with an influx of requests from one individual. This created a significant burden in terms of costs and diverting staff away from their core functions.

18. Staff resourcing for a FOI request is a contributory factor in assessing whether a request is vexatious and is supported by the Tribunal's assessment in the *Welsh v the Information Commissioner* (EA/2007/0088) case. The outcome from this case states that whether a request represents a significant burden on the public authority is "not just a question of financial resources but also includes issues of diversion and distraction from other work." The requests submitted by Mr Pearsall have consisted, in some instances, of a large number of questions per request and a significant number of these requests have been for detailed information. IMS and former UKBA staff have confirmed that their members of staff have spent a significant amount of time dealing with the FOI requests from Mr Pearsall.

Deliberate intention to cause annoyance

19. A case might be made that the requests from Mr Pearsall are designed to disrupt the authority. Links can be identified with other repeat requesters on the '*What Do They Know*' website. These repeat requesters are frequently utilising FOI requests to obtain

information and publishing details of responses and expressing their views in a way as to encourage each other to continue to submit requests. Mr Pearsall's links with other repeat requesters suggest involvement in a campaign and strengthen the view that his requests have taken on a vexatious quality.

Personal grudges

20. A case might also be made that the requests from Mr Pearsall are a reflection of his personal grudge against the former UKBA. The majority of Mr Pearsall's requests are directly or indirectly related to his wife's immigration status. She is a non-EEA family member of a British Citizen, Mr Pearsall being that British Citizen. Mr Pearsall has submitted requests relating to the Derivative Right to Reside in the UK. In March 2013, Mr Pearsall asked "*..this is a FOI request asking for all guidance/instructions relating to this..*". Mr Pearsall was provided with a substantive response but has persisted in sending very similar requests. For example, in April 2013 he asked "*...can you please provide me with all information in relation to who actually qualifies for a Derivative Right of residence...*". It could be argued that because Mr Pearsall is discontented with his wife's current immigration status, and the former UKBA's responses, he has decided to send a continuous stream of frequent and overlapping FOI requests and has now made these requests a personal matter. This could be considered to be harbouring a personal grudge against the former UKBA.

Advice and Assistance

21. No further steps required

Conclusion

22. As detailed above, and with particular reference to the issues considered in points 16 to 20, it is my determination that the IMS and former UKBA's responses were correct to declare Mr Pearsall's requests between January 2013 to May 2013 as vexatious pursuant to section 14(1) of the Act.

23. The former UKBA was in breach of section 10(1) of the Act on occasions by failing to provide Mr Pearsall with a response compliant with section 1(1) of the Act within 20 working days of receipt of his requests.

24. Finally, it is my recommendation that no further correspondence from Mr Pearsall requesting "*all guidance, complaint procedures, documents, policy/ procedures and memos etc.*" on the subjects mentioned in point 1 of this report should be acknowledged or entered into by HO. Unless, or if, the rules and regulations regarding the topics mentioned in point 1 are subject to significant changes in the future.

25. I offer the clarification that this determination is not intended to restrict or preclude any further requests for information from Mr Pearsall – but rather is concerned specifically with the issues, and the range of requests, addressed in this review.

J Hussain
Information Access Team