



Home Office

Information Access Team
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Wayne Pearsall
Email: request-156489-9abf7730@whatdotheyknow.com

Our reference: 27758

13 August 2013

Dear Mr Pearsall

Thank you for your e-mail of 28th May, in which you requested below information.

What fee remissions are possible for an application? Your solicitor informed you that there are possible fee waivers/reduction in exceptional cases - esp. in cases involving article 8 of the human rights.

How would one proceed with an application FLR(M) if such a fee was not paid. Please can you send a copy of all guidance given to UKBA officials which deals with fee remissions ETC.

In addition to this, Please forward a copy of all information you hold on the Judicial review process for a failed application for an EEA family permit.

Your request has been handled as a request for information under the Freedom of Information Act 2000.

I am able to disclose the information set out in the enclosed Annex A.

In keeping with the Freedom of Information Act, we assume that all information can be released to the public unless it is exempt. I hope that this information meets your requirements. I would like to assure you that we have provided you with all relevant information that the Home Office holds.

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 27758. 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: info.access@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
J Kumar

Information Access Team

Annex

How would an FLR(M) application proceed if the fee was not paid?

Where the requirements of a specified form are not met, including payment of the relevant fee, the application is rejected without consideration.

What fee remissions are possible?

The fees for immigration and nationality applications, as well as details regarding fee exceptions and waivers available, are specified by Statutory Instruments. Published Immigration and Nationality fees regulations including explanatory memoranda can be viewed electronically via the National Archives website at:

www.legislation.gov.uk/2013?title=immigration%20and%20nationality%20fees

An applicant who wishes to apply on an FLR(O) application form, and seeking a fee waiver because they are destitute and unable to pay the fee, may apply using the Appendix 1 FLR(O). This form can be accessed at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/flroappendix.pdf>

There is no fee waiver for applications made on an FLR(M).

What guidance on fee remissions is given to UKBA officials?

You asked for a copy of guidance given to UKBA officials which deal with fee remissions. I have interpreted this request to mean the guidance on a fee waiver for the FLR(O) application form. I confirm that the Home Office does hold this information. However, this is exempt from disclosure under section 35 (1) (a) of the FOI Act which provides that:

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –

(a) the formulation or development of government policy.'

The information you have requested in this respect relates to the ongoing formulation and development of government policy.

Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in the attached Annex B.

All other guidance notes and qualification criteria to assist potential applicants with making a successful application for leave to remain in the UK are published and available on our website at

www.ukba.homeoffice.gov.uk/

Please forward a copy of all information held on the Judicial review process for a failed application for an EEA family permit.

There is no specific Judicial Review process for EEA family applicants.

Both EEA and non-EEA applicants go through the same JR process. The information is already easily accessible on the Home Office website via the link below.

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/apl/apl6/>

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. If you encounter any difficulties in accessing this information at the link provided please contact the Home Office again.

Annex 'B' (reference 27758)

Information requested

Please can you send a copy of all guidance given to UKBA officials which deals with fee remissions.

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.

Section 35(1)(a) states that:

*'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –
(a) the formulation or development of government policy.'*

Response

Considerations in favour of disclosing the information

The Home Office recognises that there is public interest in openness and transparency in all aspects of government. The release of information contributing to the development of existing policies can potentially lead to greater involvement in political discussions, as the public would develop a better understanding of the specific issues involved.

There is a public interest in releasing the information concerned as members of the public will wish to understand the basis upon which their application for a fee waiver is to be assessed. 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 all of the available options in developing any policy relating to a fee waiver. There is also a strong public interest in ensuring that Ministers and officials are given room to develop policy in this area, without fear of proposals being prematurely disclosed into the public domain.

Disclosure at this stage would also not be in the public interest as it would harm the policy making process for Home Office officials in the future when developing policies with regard to any such schemes, as they could come under pressure not to challenge ideas in the formulation of policy and this could lead in the longer term to poorer decision making. The release of any advice on a policy that is still being developed would be very likely to prejudice the decision making process for that particular policy.

Once the guidance has been finalised and is ready to be promulgated to staff, it will be published on the website in the normal way.

Conclusion

We consider that the public interest in withholding the information outweighs those arguments in favour of release.

This is because the overall public interest lies in protecting the ability of Home Office Ministers and their officials to develop policy, with the ability to fully consider all options freely and frankly. We have also taken into consideration the fact that the guidance will be published in due course.