



Home Office

Shared Services
Directorate
2 Marsham Street
London SW1P 4DF

020 7035 4848
(switchboard)

www.homeoffice.gov.uk

BritCits

Via: WhatDoTheyKnow

May 2015

Dear BritCits

Reference number: Internal review – 34947 (follow on request from 34783)

Thank you for your email of 21 April 2015 in which you asked for an internal review of our response to your Freedom of Information (FOI) request.

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

Procedural Issues

In line with section 10(1) of the Freedom of Information Act 2000 ("the Act") the Home Office was obliged to provide a response within 20 working days of the request being received.

Your original request (reference 34783) was received by this office on 17 February 2015, and therefore the Home Office were obliged to provide a response within 20 working days (by 18/03/2015). The final response was sent to you on 1 April 2015, which was not within the 20 working days deadline. In this respect, the Home Office failed to satisfy section 10(1) of the Act.

The final response (for reference 34947) was sent to you on 21 April 2015, which was within the 20 working days deadline as it is noted that your initial FOI request (which was a follow up from request 34783) was received on 2 April 2015. It is therefore considered that the Home Office complied with section 10 of the FOI Act.

My conclusion is that the original response was correct. The Home Office was entitled to cite section 12(1) of the Freedom of Information Act 2000 in relation to your request however it failed to provide a detailed explanation of why the requested information is not available within the cost limit.

It is not possible to provide the information requested at a cost below the £600 limit because the request submitted is too broad in scope to entail the location, retrieval and assessment of the information sought within the cost limits of the Act.

In order to comply with your request we would need to make searches from approximately November 2012 (when reference was first made to the ECJ and a conservative estimate of when the first internal communication was sent on this topic) to date, a total of approximately 30 months.

A single collated folder or drive of all Home Office information on this topic does not exist so a search would need to be conducted of the corporate filing systems within different areas of the department.

We would also need to search through personal drives and personal email accounts for a large number of staff working within these units. We estimate each member of the team receives over 60-100 emails per day. We would also have to contact members of the team who have since moved elsewhere to see if they hold any information.

As well as searching for '*O and B*' we would need to search separately for:

'*Surinder Singh*' (which is the focus of the judgment) or
'*O*' (as the judgment was often shortened to) or
'*S and G*' which was a similar judgment on Surinder Singh rights which was also heard at the ECJ around the same time or
'*O and S*' as the two judgments were often referred to.

We would also need to search using an ampersand where appropriate, '*O & B*' for example. Searching for emails containing the phrases '*O*' and/or '*S*' and/or '*O and S*' will obviously not sift out very many, if any at all, emails so a significant manual exercise would be necessary in order to identify information relevant to this request.

The original judgment on Surinder Singh attracted a significant amount of email traffic so it would consume much of the team's time searching on this basis and then trying to sift out information not relevant to this request.

Finally once relevant information has been identified, retrieved and collated, we would have to go through each email or other communication to ensure it was in scope of the request.

When considering the cost limit a public authority is not required to give a precise calculation. Having considered the estimates provided in the initial response, I find that the estimates are realistic and reasonable in respect of the requests as aggregated. I agree that to provide the information would exceed the appropriate limit.

If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. For example, you could limit your request to a particular type of document, or limit to a specific period in which documents were issued. Please note that if you simply break your request down into a series of similar smaller requests, we might still decline to answer if the total cost exceeds £600.

This completes the internal review process by the Home Office for reference number **34783**.

Yours Sincerely

S Mason

Information Access Team

Switchboard 020 7035 4848 E-mail

info.access@homeoffice.gsi.gov.uk

Annex A – FOI request (dated 17 February 2015)

Dear Home Office

On 12 March 2014, CJEU ruled that "Article 21(1) TFEU must be interpreted as meaning that where a Union citizen has created or strengthened a family life with a third-country national during genuine residence, pursuant to and in conformity with the conditions set out in Article 7(1) and (2) and Article 16(1) and (2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, in a Member State other than that of which he is a national, the provisions of that directive apply by analogy where that Union citizen returns, with the family member in question, to his Member State of origin. Therefore, the conditions for granting a derived right of residence to a third-country national who is a family member of that Union citizen, in the latter's Member State of origin, should not, in principle, be more strict than those provided for by that directive for the grant of a derived right of residence to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national. "

That is:

1. A residence period of at least three months is required
2. Weekend visits and holidays do not count as residence for this purpose
3. Any citizen of the Union can potentially benefit from this right, not just workers and the self employed
4. During the period of residence family life must have been "created or strengthened" (

The full judgment can be found at:

<http://curia.europa.eu/juris/document/do...>

Please provide, as a request being made under the FOI Act:

- a) guidance issued to UKVI caseworkers and border staff in relation to this judgment
- b) timescales for when UK regulations will be amended to incorporate this court ruling

Regards

BritCits

Annex B – FOI Response (Reference – 34783)

International and Immigration

Tel: 020 7035 4848

Policy Group

Fax: 020 7035 4745

2 Marsham Street

www.gov.uk/homeoffice

London

SW1P 4DF

BritCits

[FOI #254334 email]

FOI Reference:

34783

1 April 2015

Dear BritCits

Thank you for your e-mail of 17 February, in which you asked for the following in relation to the Court of Justice of the European Union (CJEU) case of *O & B (C-456/12)*:

1. Guidance issued to UKVI caseworkers and border staff in relation to this judgment
2. Timescales for when UK regulations will be amended to incorporate this court ruling

The first part of your request has been handled as a request for information under the Freedom of Information Act 2000. We do not believe the second part of your request to be a valid Freedom of Information request but are, however, prepared to provide a response under routine correspondence.

In relation to part one, the Home Office does not hold the information which you have requested as no guidance has been issued to caseworkers or border staff as a result of this judgment.

As regards the second part of your request, we are still considering if, and how, the Immigration (European Economic Area) Regulations 2006 need to be amended as a result of the judgment and so we are currently unable to provide timescales for this.

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 34783**. 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: [email address]

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

C Doran
Free Movement Operational Policy Team
International and Immigration Policy Group (IIPG)

Annex C – FOI Request (dated 2 April 2015)

Dear FOI Responses

Thank you for your reply dated 1 April 2015.

I am surprised that no guidance has been issued to caseworkers and border staff on O&B given it's been over a year since the ruling.

However, from your response to the second part of my original FOI request and my own experience of some individual cases which were granted UK Family Permits and Residence Cards on the basis of O&B, particularly further to their contacting Linda Bateman, it appears there has been discussion about O&B within the Home Office.

Please therefore as a request under the FOI Act, release the internal communications made within the Home Office on O&B vs Netherlands, Home Office's reaction to the judgment and thoughts on the implementation.

Yours sincerely,

BritCits

Annex D – FOI Response (Reference 34947)

International and Immigration

Tel: 020 7035 4848

Policy Group

Fax: 020 7035 4745

2 Marsham Street

www.gov.uk/homeoffice

London

SW1P 4DF

BritCits

via www.whatdotheyknow.com

21 April 2015

FOI Reference: 34947

Dear BritCits

Thank you for your e-mail of 2 April, in which you ask for the following information:

“Please therefore as a request under the FOI Act, release the internal communications made within the Home Office on O&B vs Netherlands, Home Office’s reaction to the judgment and thoughts on the implementation.”

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

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 your request is too broad and simply refers to ‘*internal communications*’ which could potentially cover a large range of documents. Therefore, the Free Movement Operational Policy Team would need to search through all correspondence, documents and memos relating to the *O&B vs Netherlands* judgment which have ever been drafted or issued by that team and by other teams within the Home Office. It is considered that the

work required to ensure that all of the information held by the Home Office covered by your request was located, retrieved and extracted would by far exceed the £600 cost limit.

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.

If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. For example, you could limit your request to a particular type of document, or limit to a specific period in which documents were issued. Please note that if you simply break your request down into a series of similar smaller requests, we might still decline to answer it if the total cost exceeds £600.

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 34947. 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: [email address]

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

Free Movement Operational Policy Team
International and Immigration Policy Group (IIPG)
Home Office

Annex E – Internal Review request (dated 21 April 2015))

Dear Home Office,

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

I am writing to request an internal review of Home Office's handling of my FOI request 'O&B vs Netherlands'.

I question the claim that responding to my request would entail over 24 man hours to collate the information. This should be readily available in a folder or drive, and whilst I would expect it to take a few hours, over 24 would elad to questioning HO competency!

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.whatdotheyknow.com/request/ob_vs_netherlands

Yours faithfully,

BritCits

Annex F - Further complaint procedure

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