



Home Office

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S. Lassam

FOI Reference: 24184/1614

Email:
request-120967-f5b70da4@whatdotheyknow.com

Dear S Lassam

Freedom of Information request (our ref: 24184): internal review

Thank you for your e-mail of 30 November 2012, in which you asked for an internal review of our response to your Freedom of Information (FoI) request about used COS and the associated work visa issued by UKBA for non EEA migrant workers for Tier 2 (general) and Tier 2 (intra company transfer) workers .

I have now completed the review. I have examined all the relevant papers, 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 conclusion is that UKBA correctly withheld some of the requested details on the grounds that they constituted personal information (section 40(2)). For further explanation of section 40 see paragraphs 12-15.

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

Diana Pottinger
Information Access Team

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by S Lassam (reference 24184)

Responding Unit: UK Border Agency (UKBA)

Chronology

Original Fol request: 11 September 2012

UKBA response: 19 November 2012

Request for internal review: 30 November 2012

Subject of request

1. S Lassam has submitted a series of requests about used COS and the associated work visa issued by UKBA for non EEA migrant workers for Tier 2(General) and Tier 2 (Intra company transfer) workers.
2. This request, a clarification of request ref 23305 (March 2012), asks for the same information as for the March 2012 request, but for 2009, 2010, and the first six months of 2012. The March 2012 response provided a spreadsheet with the following columns:

Sub tier/ sub tier description/ nationality/ Gender/ Job title/ job type/ date assigned/ salary/ salary period/ allowances/ shortage occupation/ client contract/ age.

For a full list of the questions see **Annex A**.

The response by UKBA

3. UKBA supplied S Lassam with a spreadsheet showing Tier 2 (General) and Inter company transfers (ICTs) for the requested time period with the following columns:

Migrant classification/ nationality/ gender/ salary range/ shortage occupation/ age range/

The request for an internal review

4. S Lassam states that the information supplied is summarised to such an extent that it cannot be used for comparison, and asks for the level of detail supplied in the previous request (with personal details removed).

Procedural issues

5. The Home Office received S Lassam's request via email on 11 September 2012.

6. On 19 November 2012 the Home Office provided S Lassam with a substantive response, which represents 49 working days after the initial request. Therefore, the Home Office failed to comply with section 10(1) by providing a response within the statutory deadline of 20 working days.
7. The response confirmed that information was held relating to the request, and released it in a summarised form to avoid disclosing personal information (section 40(2)).
8. S Lassam was informed in writing of his right to request an independent internal review of the handling of his request, as required by section 17(7)(a) of the Act.
9. The response also informed S Lassam of his right of complaint to the Information Commissioner, as set out in section 17(7)(b) of the Act.

Consideration of the response

Background

10. Skilled workers who have been offered jobs in the UK should apply for leave to come and work in the UK under Tier 2 of the points based system. In order to apply for this, migrants must have a valid Certificate of Sponsorship (COS) from their employer. This series of requests asks for information about COS that have been used by migrants in the past four years.

The use of exemptions – section 40(2) – personal information

11. UKBA withheld precise details of the tier, sub-tier description, Job title and type, date assigned, salary and allowances and age citing section 40(2) – personal information.
12. The relevant sub-sections of section 40 state:

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1),*
- and*
- (b) either the first or the second condition below is satisfied*

(3) the first condition is-

(a) in the case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) Any of the data protection principles, or*
- (ii) Section 10 of that Act (right to prevent processing likely to cause damage or distress), and*

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

13. S Lassam has asked whether the withheld information can be disclosed, with the personal information redacted. Personal information is information which a third party could use to identify an individual. Although no one piece of the withheld information could, on its own, identify an individual, taken together, the job title, nationality, gender, pay, and age, of a person working for a named company could allow the person to be identified.
14. Consequently, I am satisfied that the decision to withhold those details was correct.
15. S Lassam correctly states that the withheld details were supplied in the response to a previous request. Each request is considered on its own merits, and the fact that similar information was disclosed in the past does not oblige the Department to do so on a subsequent occasion.
16. Quarterly immigration figures which may be of interest to S Lassam are published on the Home Office website at the following link:
<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q3-2012/>

Other matters

17. Over the course of just over a year (from December 2011 to date) S Lassam has submitted a long series of requests on this subject, and has responded to each disclosure with clarifications, follow up requests, complaints, or requests for further information.
18. As all of the requests related to the same subject, UKBA should have aggregated the costs, and considered whether the requests, taken together, exceeded the cost limit (section 12).
19. This series of requests has placed a significant burden on UKBA; the total amount of work required significantly exceeding the cost limit.
20. Should S Lassam submit any further requests on the subject, they are likely to be refused under section 14 as vexatious or repeated requests.
21. Section 14 of the FOI Act is intended to protect public authorities from those who might abuse the right to request information. It 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.

22. Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, Departments should consider the following questions:
- Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
23. This series of requests has placed a significant burden on UKBA; the total amount of work required significantly exceeding the cost limit.
24. In order to avoid this, S Lassam should leave a reasonable interval before submitting further requests, and think carefully about the precise information he requires, so that future requests are not followed by multiple 'clarifications' or requests for further information. He should also use the Gov.uk website, including the link supplied above to check that the information he requires is not already accessible because it has been, or soon will be, published.

Conclusion

25. The response was not sent within 20 working days; consequently the Home Office was in breach of section 10(1) of the FOI Act.
26. Section 1(1)(a) was complied with, as the response clearly stated that the requested information was held.
27. Section 40(2) was correctly engaged.
28. The response complied with the requirements in section 17(7)(a) and 17(7)(b) as it provided details of the complaints procedure.

Information Access Team
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