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Mr Wayne Pearsall
[request-153112-
1e07b404@whatdotheyknow.com](mailto:request-153112-1e07b404@whatdotheyknow.com)

30 May 2013

Dear Mr Pearsall

Freedom of Information request (our ref. 26814): internal review

Thank you for your e-mail of 16 April 2013, in which you asked for an internal review of our response to your Freedom of Information (FoI) request about information held in relation to derivative residence of a non-EEA national parent and their ability to gain ILR/PR via the route of 'Zambrano'.

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 conclusion is that the original response was largely correct. You were provided with all the guidance notes held within the scope of the request, but we were at fault in not considering all the information relevant to this request. We do hold some additional information but this is exempt from disclosure under section 35(1)(a) of the Act. Please refer to the attached report for additional details.

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

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 26814)

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

Chronology

Original Fol request:	14/03/2013
Acknowledgement:	14/03/2013
UKBA response:	15/04/2013
Request for internal review:	16/04/2013

Subject of request

1. On 14 March 2013, Mr Pearsall submitted a Freedom of Information request for the following information:
 - *All information available in relation to "Zambrano" Derivative Residence of a non eea national mother/father and their ability to gain ILR / PR via the route of Zambrano.*
 - *Under current UK Immigration laws, there is the option of the 10 year family life route to gain ILR. Should a mother or father of a british child qualify for the right of residence within the UK as the parent of a British Citizen, would they be able to claim ILR after ten years of family life?*

The response by UKBA

2. Mr Pearsall was informed that guidance held by the Department on 'Zambrano' (Operational Policy notice 21/2012) had previously been provided to him in response to a previous FOI request (26630) and it was not going to be provided again. Mr Pearsall was informed that this guidance sets out that there is no right to permanent residence for persons claiming to have a 'derivative right of residence'.
3. The second part of Mr Pearsall's request was handled outside of the FOI Act, as it consisted of a general enquiry rather than a request for recorded information. Mr Pearsall was provided with an answer.

Request for an internal review

4. Mr Pearsall requested an internal review because he believes he was not provided with all the information held by the Home Office. He made the following arguments:
 - *There are numerous guidance notes in EX.1 which give details and mention Zambrano.*
 - *UKBA hold further guidance than that already released in answer to FOI case 26630.*
 - *He did not simply request guidance notes, but all information held by UKBA.*

Procedural issues

5. The original request was received on 14 March 2013 and a response was issued on 15 April 2013. This represents a period of 20 working days between receipt of the request and the response being issued. This means that the response was inside 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. I can confirm there are a number of guidance notes which give details of or mention 'Zambrano' and that not all of these have been released to Mr Pearsall. This is because Mr Pearsall has not included them in the scope of the various requests which he has made. His requests have mostly been very specific and the information has been released subject to any exemptions.
8. In this case, Mr Pearsall requested:

"All information available in relation to "Zambrano" Derivative Residence of a non eea national mother/father and their ability to gain ILR / PR via the route of Zambrano."

9. Guidance notes on the specific point referred to in the request are not held. This is because the 'Zambrano' right does not directly lead to permanent residence or indefinite leave to remain. The policy notices previously released as part of the response to Mr Pearsall's separate request (26630) contain the only information held in the form of guidance with the subject matter of 'Zambrano' and 'permanent residence'. As the Department is aware that Mr Pearsall already has a copy of this, it was deemed unnecessary to re-release it.
10. I can confirm that Mr Pearsall has been provided with the relevant guidance notes to answer this request. UKBA were also right not to re-release information already disclosed to Mr Pearsall.
11. However, in this case Mr Pearsall did not just ask for guidance notes but all information held by UKBA relating to the subject. There is some additional material in scope, which I have reviewed. It is the same information that is the subject of a separate FoI request made by Mr Pearsall (case 26953). The information was withheld under section 35(1)(a) (formulation or development of government policy). I confirm that this information is within the scope of the current request (26814), but was not considered when the original response was sent to Mr Pearsall.
12. The additional information is currently subject to policy considerations, for which Ministers have yet to make a formal decision. Section 35(1)(a) therefore applies. Section 35(1)(a) is a qualified exemption, which requires consideration of the public interest test. This can be found in Annex A of the attached report. Having reviewed the additional information and carried out the required public interest test, this review confirms that the information is exempt from disclosure under section 35(1)(a).

Advice and assistance

13. Mr Pearsall requested this information twice, under this case reference 26814 and a similarly phrased question for case 26953. We acknowledge that part of the reason for this stems from the fact that Mr Pearsall originally submitted this request to the IND Public enquiries mailbox. That mailbox is discontinued and accepts no incoming messages. When email is sent to this mailbox a lengthy automated response is issued, advising the public it is out of service and informing individuals where correspondence should now be sent. Due to the confusion Mr Pearsall experienced (as evidenced on his Whatdotheyknow.com page) as to whether his request had been accepted or not, Mr Pearsall re-submitted similar requests a number of times. At the initial request stage neither 26814 nor 26953 were treated as repeated requests.

14. 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.

15. 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

16. The Department was not in breach of section 10(1) of the Act in relation to the timeliness of the response.

17. The Department was in breach of section 1(1)(a) of the Act by not confirming that all the requested information is held.

18. The Department was in breach of section 17(1) of the Act by not engaging the relevant exemption to withhold the requested information.

19. Information identified within scope has been withheld as part of this internal review, Sections 35(1)(a) has been engaged.

20. I am satisfied there was no procedural breach of section 17(7)(a) and 17(7)(b).

Information Access Team

Home Office

30/05/2013

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 writing to request all information available in relation to "Zambrano" Derivative Residence of a non eea national mother/father and their ability to gain ILR / PR via the route of Zambrano.

Under current UK Immigration laws, there is the option of the 10 year family life route to gain ILR.

should a mother or father of a british child qualify for the right of residence within the UK as the parent of a British Citizen, would they be able to claim ILR after ten years of family life?

Yours faithfully,

Annex C – Original Response in full

Dear Mr. Pearsall,

Thank you for your email of 14 March in which you ask for information regarding the provisions for indefinite leave to remain (ILR) or permanent residence (PR) for persons with a right of residence on the basis of the judgment of the Court of Justice of the European Union (ECJ) in the case of *Ruiz Zambrano* (C34-09). Part of your request is being handled as a request for information under the Freedom of Information Act 2000, and part is being handled as a routine enquiry as it does not specifically request the release of information held by the UK Border Agency.

You have made the following request:

"I am writing to request all information available in relation to "Zambrano" Derivative Residence of a non EEA national mother/father and their ability to gain ILR / PR via the route of Zambrano.

Under current UK Immigration laws, there is the option of the 10 year family life route to gain ILR. Should a mother or father of a British child qualify for the right of residence within the UK as the parent of a British Citizen, would they be able to claim ILR after ten years of family life?"

The first part of your request falls to be treated under the Freedom of Information Act 2000 as you have requested specific information which you believe to be held by the UK Border Agency.

With reference to guidance on Zambrano, we have provided you with European Operational Policy Notice 21/2012 as part of our response to your previous FOI request (FOI 26630), which is the current caseworker guidance for Zambrano cases. This guidance sets out that there is no right to permanent residence for persons claiming to have a derivative right of residence.

As this guidance has already been provided to you as part of our response to FOI 26630, I have not included this guidance in our response to this request.

The remainder of your request comprises general questions relating to UK Border Agency policy and therefore falls to be treated as a routine enquiry rather than under the Freedom of Information Act. I have enclosed a response to the remainder of your request at Annex A of this letter.

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 26814. 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

Annex A of FOI 26814 – response to routine enquiry.

You have asked the following:

“Under current UK Immigration laws, there is the option of the 10 year family life route to gain ILR. Should a mother or father of a British child qualify for the right of residence within the UK as the parent of a British Citizen, would they be able to claim ILR after ten years of family life?”

A person applying for Indefinite Leave to Remain (ILR) under the Immigration Rules must meet the requirements set out in the section of the Rules which they are applying under. For a person applying for ILR on the basis of family life as a parent of a child in the UK, they would need to demonstrate, amongst other requirements, that they had held valid leave to enter or remain in this category for a continuous period of 60 months (for persons who met the relevant financial requirements for that route) or for 120 months (for persons who did not meet the financial requirement but who qualified on the basis of paragraph EX1 of the Immigration Rules).

A person who has not held valid leave to enter or remain on the basis of family life as a parent of a child in the UK for the required period will not qualify for a grant of indefinite leave to remain on this basis.

A person who has resided in the UK with a right of residence under EU law as the primary carer of a British citizen („Zambrano”) will therefore not meet the requirements for ILR as the parent of a child in the UK under section R-ILRPT of paragraph EX1 unless they have also held leave to enter or remain under the Immigration Rules in that category for the specified period.

Annex D – Internal Review request

Dear UK Border Agency,

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

I am writing to request an internal review of UK Border Agency's handling of my FOI request 'Zambrano and ILR'.

my original request:

I am writing to request all information available in relation to "Zambrano" Derivative Residence of a non eea national mother/father and their ability to gain ILR / PR via the route of Zambrano.

I note that there are numerous guidance notes in EX.1 which give details and mention Zambrano.

Whilst I do not personally hold a copy of this guidance, I am well aware UKBA hold further information than already released in my FOI response 26630

Therefore please conduct a FOI Internal Review into 26814 why information requested has not been disclosed.

I did not simply request guidance notes, but all information held by UKBA.

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

<http://www.whatdotheyknow.com/request/za...>

Yours faithfully,