

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 December 2011

**Public Authority:** UK Border Agency (an executive agency of the Home Office)

**Address:** Home Office  
2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested:

1. Details of the current number of active Tier 2 Intra Company visas by applicant country of origin, split between those issued for a period less than 12 months and those issued with a period over 12 months.

2. How many of the above visas are recorded within the UKBA Sponsorship Management System as jobs on a client contract?

3. Details of the current number of active Tier 2 General visa by applicant country of origin, split between those issued for a period less than 12 months and those issued with a period over 12 months.

4. How many of the above visas are recorded within the UKBA sponsorship management system as Jobs on a client contract?

2. The Commissioner's decision is that the UK Border Agency's reliance on section 12(1) not to provide the requested information was correct. He requires no steps to be taken.

#### Background

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3. The Commissioner notes that the UK Border Agency ("UKBA") is not a public authority itself, but is actually an executive agency of the Home

Office that is responsible for it; therefore, the public authority in this case is actually the Home Office and not the UKBA. However, for the sake of clarity, this Decision Notice refers to the UKBA as if it were the public authority.

4. There are varying immigration categories for non-European Economic Area migrants who want to work in the United Kingdom.
5. Tier 2 (Intra company transfer) is a category for employees of multinational companies who are being transferred by their overseas employer to a UK branch of the organisation, either on a long-term basis or for frequent short visits. This category has four sub-divisions. The relevant two, for the purposes of this decision notice, are:
  - Long-term staff - for established, skilled employees to be transferred to the UK branch of their organisation for more than 12 months to fill a post that cannot be filled by a new recruit from the resident workforce
  - Short-term staff - for established, skilled employees to be transferred to the UK branch of their organisation for 12 months or less to fill a post that cannot be filled by a new recruit from the resident workforce

## **Request and response**

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6. On 16 December 2010 the complainant, via his Member of Parliament (Mr Adam Afriyie), made a request for information to the Home Secretary, Mrs Theresa May MP. The request, as follows, was considered under the Freedom of Information Act 2000 ("the Act"):
  1. Will the Home Secretary provide details of the current number of active Tier 2 Intra Company visas by applicant country of origin, split between those issued for a period less than 12 months and those issued with a period over 12 months?
  2. How many of the above visas are recorded within the UKBA Sponsorship Management System as jobs on a client contract?
  3. Will the Home Secretary provide details of the current number of active Tier 2 General visa by applicant country of origin, split between those issued for a period less than 12 months and those issued with a period over 12 months?

4. How many of the above visas are recorded within the UKBA sponsorship management system as jobs on a client contract?
5. As part of the Home Secretary's drive to help restore public confidence in the immigration system will she consider publishing stats on a regular basis?
7. The UKBA responded on 19 January 2011, providing information in respect of questions one and three, and a link to the Research, Development and Statistics part of the Home Office website in respect of question 5. The information requested under questions two and four was, it said, exempt under section 12 of the Act. The response explained that to locate and retrieve the information sought would exceed the £600 cost limit.
8. Following an internal review the UKBA wrote to the complainant on 11 February 2011. It stated that the original decision to rely on section 12 not to provide information was correct.

### **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the UKBA's refusal to provide him with some of the information he had requested.
10. He stated that a different subsequent request he had submitted which asked for similar information regarding 'jobs on a client contract' was answered, with the requested information provided. This, he argued, demonstrated that the information in his original request was readily available and showed that officers within the UKBA were concealing information. This assertion, if correct, may amount to a breach of section 77 FOIA. It was therefore subject to an investigation by the Commissioner's Enforcement team. The history and outcome of that investigation is reported in the Other Matter section in this decision notice.
11. The scope of the Commissioner's investigation (as set out in the main body of this notice) was to determine whether the UKBA's decision not to provide information as per the complainant's request at parts 2 and 4 above was correct.

## Reasons for decision

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12. Section 12(1) provides that a public authority need not comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 state that the appropriate cost limit is £600 for central government and sets out the basis upon which an estimate can be made:

*“(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only the costs it reasonably expects to incur in relation to the request in –*

*(a) determining whether it holds the information,*

*(b) locating the information, or a document which may contain the information,*

*(c) retrieving the information, or a document which may contain the information, and*

*(d) extracting the information from a document containing it.*

*(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per hour.”*

14. UKBA explained that it was able to provide the information in response to parts 1 and 3 of the complainant's request. These showed that 32,817 Tier 2 (Intra Company Transfers) visas and 14,686 Tier 2 (General) visas were active at the time of the request. However, it is not possible to cross-refer information about visas with jobs on a client contract using the UK Border Agency's management information. To obtain the information requested at parts 2 and 4 of the request it would need to cross-reference, manually, its paper files. To do this it would have to retrieve the files from various Visa Sections globally and then review the contents of each file to establish whether the applicant was on a job client contract. The figures provided to the complainant were global statistics; applicants may have made their applications for a Tier 2 Intra Company Transfers visa or a Tier 2 general visa in any country in which they were legally resident, not necessarily in their country of origin.

15. UKBA estimates that for each file, it would take around 15 minutes to locate and retrieve one file and then a further 15 minutes to examine the file for the requested information. That equates to 30 minutes for one file, or 5 hours for 10 files. To provide the information requested at part 2 of the request would therefore take approximately  $(3,280 \times 5) = 16,405$  hours and to provide the information requested at part 4 of the request would therefore take approximately  $(1,469 \times 5) = 7,345$  hours.
16. In reaching his decision, the Commissioner considers that any estimate should be sensible, realistic and supported by cogent evidence. Bearing this in mind, the Commissioner has concluded that UKBA applied the exemption at section 12 correctly. After considering all the arguments relevant to the cost limit exemption, the Commissioner is satisfied that the disclosure of the withheld information within the scope of the request would exceed the 24 -hour limit.

## Other matters

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17. As stated at paragraph 10 above the complainant asserted that UKBA was withholding information in circumstances that if it were true, amounted to a breach of section 77 of FOIA. Section 77 provides, amongst other things, that it is a criminal offence to conceal a public authority's records to prevent their disclosure.
18. The Commissioner stated to UKBA that he had received a complaint from the complainant in relation to an FOIA request he had submitted to the UKBA (the subject matter of this decision notice) that it had given the reference number 17187. The Commissioner explained that he understood that the Visa Services Directorate in Croydon processed this request.
19. The Commissioner then explained that the complainant had also made another request for similar information relating to Intra Company Transfers. He understood that the UKBA's North East, Yorkshire and the Humber Region team dealt with this request and referenced it as number 17651. UKBA had provided the complainant with the information he had requested. This information appeared similar to that which the complainant sought in his request 17187 and thus the complainant had formed the opinion that the response from the Croydon team was misleading and that someone who dealt with that request may have committed an offence under section 77 of the Act.
20. The UKBA replied that the information that the complainant asked for in the two requests were contained in two separate non-interactable systems. The information requested in questions 2 and 4 of 17187 being

not available within a single database and there is no way of linking databases together to provide it.

21. The UKBA further replied that, in any event, the two requests are not the same. Those in 17187 are about visas and were therefore answered by the UKBA's Visa Services Directorate. Information about visas and visa applications are held on the Central Reference System known as the CRS database. The information requested at questions 2 and 4 of 17187 about jobs on a client contract cannot be extracted electronically from the CRS database. In order to extract the information a manual search of a large volume of paper files would be required.
22. The subsequent request, 17651, was specifically about certificates of sponsorship and thus dealt with by the UKBA's North East, Yorkshire and Humberside Office, who deal with sponsorship management. The separate database, Metastorm, which holds information on that subject, does not hold information about visa applications. The approval of a Certificate of Sponsorship (CoS) is separate from leave to remain or leave to enter granted by way of a visa. If a CoS were to be assigned, the applicant would still need to either make a leave to remain or leave to enter application.
23. In the light of the above explanation, the Commissioner concluded that the information requested in relation to visas from the CRS database would require a manual search of records whilst COS information is held on a different database, Metastorm. This is searchable, hence the supply of the information requested. Accordingly the Commissioner is satisfied that there was no evidence that any offence under section 77 of the Act has been committed

## Right of appeal

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24. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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