

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 July 2015

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to immigration. The Home Office failed to respond to this request.
2. The Commissioner's decision is that the Home Office breached sections 1(1) and 10(1) of the FOIA in failing to respond and it is now required to provide a response.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Respond to the request.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

#### Request and response

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5. On 18 March 2015 the complainant wrote to the Home Office and requested information in the following terms:

*"Please clarify whether by the above it is meant that in practice family members of British citizens, holding an Article 10 Residence Card issued by an EEA Member State other than Switzerland, are thus still required to obtain a UK Family Permit or UK visa, even where the*

*travel is with or to join their sponsor (British).*

*Specifically, is the Home Office then interpreting the McCarthy judgment as not applying to family members of British citizens, even where the family member holds an Article 10 Residence Card purely because of their relationship with the British citizen who the issuing Member State accepts has exercised their EU treaty rights?*

*If the answer to the above is yes, please explain why.*

*As a separate request, please let us know why UK has interpreted McCarthy to not apply to those holding a Swiss Residence Card”.*

6. By the date of this decision notice the Home Office had failed to respond to this request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 18 June 2015 to complain about the failure by the Home Office to respond to their information request.
8. The ICO contacted the Home Office on 6 July 2015 and asked it to respond to the complainant’s request within 10 working days. The Home Office did not respond.

### **Reasons for decision**

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#### **Sections 1 and 10**

9. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *“not later than the twentieth working day following the date of receipt”*.
10. In this case the Home Office has breached sections 1(1) and 10(1) by failing to respond substantively to the requests within 20 working days. At paragraph 3 above the Home Office is now required to respond to the complainant’s requests in accordance with the FOIA.

## **Other matters**

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11. As well as issuing this notice, the Commissioner has made a separate record of the delay by the Home Office in responding to the complainant's requests. This issue may be revisited should evidence from other cases suggest that this is necessary.

## Right of appeal

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12. 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: 0870 739 5836

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

13. 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.
14. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**