

VISA PAK ISSUE 483 — 17 SEPTEMBER 2021

CONSIDERATION OF ANONYMOUS ALLEGATIONS

INZ has received a number of complaints about our handling of anonymous allegations. INZ must take care when considering anonymous allegations in the context of making a decision on an application. An anonymous allegation includes information supplied to INZ by a person(s) whose identity is known to INZ and who wishes to remain anonymous, or where the identity of the person(s) is unknown to INZ.

Immigration officers (IOs) must first determine if the allegation is relevant to the application before taking any further action. Where it is relevant, IOs must ensure applicants have a fair and reasonable opportunity to respond to an allegation which is anonymous. IOs must also ensure that information is used in a form that does not breach the privacy of a person who makes an allegation and who wishes to remain anonymous.

Principle 11 of the Privacy Act 2020

Principle 11 of the Act states that an agency may only disclose personal information in limited circumstances, for example if the agency believes, on reasonable grounds that:

- disclosure is one of the purposes for which the agency got the information
- disclosure is necessary to uphold or enforce the law (ie maintenance of the law)
- disclosure is necessary for court proceedings
- the person concerned authorised the disclosure
- the information is going to be used in a form that does not identify the person concerned.

Considering an anonymous allegation

Determine if the allegation is relevant to the application

When an anonymous allegation has been received, IOs must first determine if it is relevant to the assessment of the requirements of the application, including health and character (for example: the allegation aligns with or supports other known information that is relevant to the requirements of the application). The IO should then consider that, even if the information is relevant, whether it should form part of the decision making i.e. are there other factors that mean the decision can be made without relying on the anonymous information.

If the anonymous allegation is detailed within a border alert or branch warning, the steps set out in IAC 16-01 Guidelines on AMS alerts and warnings must be followed to assist in determining if the allegation is relevant to the application. In particular, if the information provided is unclear or an investigation is ongoing, the IO should contact the author (or the relevant manager if the author is no longer available) to clarify the information.

Determine how to provide an opportunity to respond to the allegation

If an IO determines that the allegation is relevant, then IOs (only after consultation with either a Technical Advisor (TA), or Manager) should put the information to applicants for comment with care, and only if they are able to do so without inadvertently disclosing information that would result in the person who made the allegation being identifiable. This may require IOs to summarise an allegation in a way that ensures it is specific and doesn't identify the person who made it, rather than providing a copy of the specific allegation made. Consideration should be given to the tone and words that are used when asking for comment, as an IO could



unintentionally identify a person where it is not necessarily obvious to an IO. Consideration should also be given to the most appropriate way to ask for comment on anonymous information: in writing, through a face-to-face interview or by telephone.

An IO must consider whether putting the information to an applicant will likely identify the informant and/potentially endanger them. If it would do so, then the information should not be provided to the applicant for comment, and the information should be set aside by the decision maker. IOs should consider other relevant avenues for verifying the information provided (without reference to the allegation) if it is relevant to the application, for example: requesting Police certificates, bank account statements etc.

An IO must not ask the applicant who they think has made the anonymous allegation.

Consider the response provided by the applicant

If a response is provided by an applicant, an IO must weigh that response against the anonymous allegation, and make an assessment of credibility and facts in light of all the information gathered. If an allegation is anonymous and cannot be substantiated, less weight should be given to it in this weighing exercise.

If the information is unable to be corroborated it could be considered an irrelevant consideration and should not be taken into account by the decision maker.

Withholding details about an anonymous informant

Anonymous information can be disclosed to an applicant as long as care is taken not to identify the person who made the allegation by releasing their name or details, or using words or phrases that may be recognisable to the applicant. The focus should be on the specific substance of the allegation. Agencies are able to withhold the identity of the person who made the allegation so they can investigate an allegation and determine whether it is relevant to any visa assessment, without their identity being disclosed. If a person making an anonymous allegations knew their identity would be disclosed to the person to who it relates, this could discourage people from coming forward with concerns.