



# Administrative Appeals Tribunal

FOI ref: 2023/0138

31 July 2023

Siobhan

Via email: [foi+request-10414-101b0ace@righttoknow.org.au](mailto:foi+request-10414-101b0ace@righttoknow.org.au)

Dear Siobhan

## **Notice of Decision for Freedom of Information Request no. 2023/0138**

The purpose of this letter is to give you a decision about access to documents that you have requested under the *Freedom of Information Act 1982 (FOI Act)*.

### **Summary**

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

You lodged an FOI request on 30 June 2023 for access to:

*“Decisions made by Ms Kira Raif:*

1. *Category 1: The total number of cases finalised by Ms Kira Raif in the Migration and Refugee Division of the Administrative Appeals Tribunal, for each calendar year starting from the year when her first case was finalised.*
  - a. *Subcategory of Category 1: Out of the number in Category 1, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*
2. *Category 2: The total number of cases finalised by Ms Kira Raif in the General Division of the Administrative Appeals Tribunal where what was reviewed were decisions made under Part 9 of the Migration Act 1958 (Cth), for each calendar year starting from the year when her first case was finalised.*
  - a. *Subcategory of Category 2: Out of the number in Category 2, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*
3. *Category 3: The total number of cases finalised by Ms Kira Raif in the Migration Review Tribunal, for each calendar year starting from the year when her first case was finalised.*
  - a. *Subcategory of Category 3: Out of the number in Category 3, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*

4. *Category 4: The total number of cases finalised by Ms Kira Raif in the Refugee Review Tribunal, for each calendar year starting from the year when her first case was finalised.*

a. *Subcategory of Category 4: Out of the number in Category 4, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*

*Decisions made by decision-makers other than Ms Kira Raif:*

5. *Category 5: The total number of cases finalised by decision-makers other than Ms Kira Raif in the Migration and Refugee Division of the Administrative Appeals Tribunal, for each calendar year contemplated by Category 1.*

a. *Subcategory of Category 5: Out of the number in Category 5, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*

6. *Category 6: The total number of cases finalised by decision-makers other than Ms Kira Raif in the General Division of the Administrative Appeals Tribunal where what was reviewed were decisions made under Part 9 of the Migration Act 1958 (Cth), for each calendar year contemplated by Category 2.*

a. *Subcategory of Category 6: Out of the number in Category 6, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*

7. *Category 7: The total number of cases finalised by decision-makers other than Ms Kira Raif in the Migration Review Tribunal, for each calendar year contemplated by Category 3.*

a. *Subcategory of Category 7: Out of the number in Category 7, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*

8. *Category 8: The total number of cases finalised by decision-makers other than Ms Kira Raif in the Refugee Review Tribunal, for each calendar year contemplated by Category 4.*

a. *Subcategory of Category 8: Out of the number in Category 8, the total number of cases where the decisions under review were not affirmed, for each such calendar year.*

*The FOI applicant further notes as follows:*

a. *The word "finalised" above:*

A) *when used in categories 1 to 4, refers to cases finalised by Ms Raif where she was the only decision-maker (i.e. where the Tribunal in question was constituted only by Ms Raif), whether as a Member or Senior Member;*

B) *refers to final/substantive (i.e. not procedural, such as whether to issue a subpoena or call a witness to give evidence) review decisions made;*

C) *excludes decisions made under section 362B of the Migration Act 1958 (Cth);*

- D) *excludes decisions made under section 426A of the Migration Act 1958 (Cth);*
- E) *excludes decisions made under section 42A of the Administrative Appeals Tribunal Act 1975 (Cth);*
- F) *excludes cases finalised by reason of the respective review applications being withdrawn by the review applicant (this exclusion was ignored in the disclosure contained in FOI reference 2023/0104);*
- G) *excludes cases finalised by reason of the respective review applications being withdrawn on behalf of a review applicant;*
- H) *excludes cases finalised by reason of any review application fee (whether or not it was reduced by the Tribunal) not having been paid;*
- I) *excludes cases finalised by reason of the review application been lodged through an invalid lodgement method;*
- J) *excludes cases finalised by reason of there being no primary decision for review;*
- K) *excludes cases finalised by reason of there being no Tribunal-reviewable decision;*
- L) *excludes outcomes described by footnote #5 of the disclosure contained in FOI reference 2023/0104 as follows:*
- i. "Fee not waived/reduced and not paid";*
  - ii. "Invalid lodgement method";*
  - iii. "No primary decision for review";*
  - iv. "No Tribunal-reviewable decision";*
  - v. "Timeframes not met".*
- M) *excludes cases finalised by consent of one or more parties;*
- N) *excludes outcomes described by footnote #7 of the disclosure contained in FOI reference 2023/0104:*
- i. "by consent"; and*
  - ii. "By consent ..."; and*
  - iii. "Other".*
- O) *excludes decisions involving a finding that the Tribunal did not have jurisdiction, whether for reason of the review application being filed after any statutory deadlines, by being filed by someone who was unauthorised to file a review application or otherwise;*
- P) *includes only decisions which include one or more of the following outcomes:*
- i. decisions affirming the decision under review;*
  - ii. decisions setting aside the decision under review;*
  - iii. decisions varying the decision under review;*

- iv. *decisions substituting another decision for the decision under review;*
- v. *decisions remitting the matter to the original decision-maker, with or without a direction to the original decision-maker;*

Q) *refers only to final/substantive (i.e. not procedural, such as whether to issue a subpoena or call a witness to give evidence) review decisions made (this is similar, but not the same, as item a(B))”*

Though the Tribunal possesses computer programs which create reports and allow for statistics to be drawn from operation systems and configured into a data report, it does not specifically possess a document which contains all of the information you have requested in a discrete form. That is, Tribunal computer systems hold this information, but it is not held on a document. Therefore, your request was processed under section 17 of the FOI Act which states that:

(1) Where:

- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
  - (ii) the making of a transcript from a sound recording held in the agency;the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

In order to produce the requested information into a discrete form I have liaised with the Tribunal's Reporting team and requested that they collate the data into single document.

On 7 July 2023 I wrote to you to clarify the scope of your request. I asked that you confirm that your request excludes the following decision types relating to cases finalised by Senior Member Kira Raif and other members:

- *Application dismissed*
- *Withdrawn*
- *No jurisdiction for any reason, including non-payment (or waiver/reduction) of fee, invalid lodgement, no reviewable decision, timeframes not met or incorrect person applied for review*
- *Finalised by consent*
- *Where the finalisation reason is 'Other'*

I also noted that you have specifically included the following outcomes which you wish to obtain records for:

- decisions affirming the decision under review
- decisions setting aside the decision under review
- decisions varying the decision under review
- decisions substituting another decision for the decision under review
- decisions remitting the matter

On 17 July you responded and added that the following changes have been made to the substance of the FOI request, as compared to your previous request:

- *Labels have now been assigned to each of the bullet points within paragraph (a) of that definition. The labels are subparagraphs (a)(A) to (a)(F).*
- *The following words have been added to the end of subparagraph (a)(F), which was the last bullet point within paragraph (a) of the original definition: “(this exclusion was ignored in the disclosure contained in FOI reference 2023/0104)”.*
- *Subparagraphs (a)(G) to (a)(Q) have been added after paragraph (a)(F) (i.e. after the last bullet point within paragraph (a)) of the original definition.*

## **Decision**

I have decided to release these document containing the requested information, produced under section 17 of the FOI Act, to you in full.

I have taken the following into account in making my decision:

- your requested received by us on 30 June 023
- the FOI Act, specifically section 17
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

## **Your review rights**

Information about how you can apply for a review of this decision or complain about how we have dealt with this matter is set out in the attached fact sheet, FOI 2.

If you have any questions about this decision, please contact me at [foi@aat.gov.au](mailto:foi@aat.gov.au).

Yours sincerely,

**Marta M**

Authorised FOI Officer (APS 6)

## **Attachments**

FOI 2 – Information about reviews and complaints under the Freedom of Information Act

# **Information about reviews and complaints under the Freedom of Information Act**

## **What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?**

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

## **How do I apply for internal review to the AAT?**

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

## **How do I apply for review to the Australian Information Commissioner?**

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

## **What if I want to make a complaint about the handling of a Freedom of Information request?**

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

## **Where can I find further information or contact details for the Office of the Australian Information Commissioner?**

Further information is available on the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au) and you can contact the office on 1300 363 992 or by email at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).