



18 October 2023

ViMak

BY EMAIL: foi+request-10605-4a1a0701@righttoknow.org.au

In reply please quote:

FOI Request: FA 23/08/01597

File Number: FA23/08/01597

Dear ViMak

Freedom of Information (FOI) request – Access Decision

On 23 August 2023, the Department of Home Affairs (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following document:

You have provided the list of accredited sponsors. Can you also provide a list of the standard (non-accredited) ones?

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

4 Document in scope of request

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce one document that contains information that falls within the scope of your request for a list of standard (non-accredited) sponsors. The data produced in the document existed in the possession of the Department on 30 September 2023. This is a list of 'active sponsors', which are sponsors that have a subclass 457 or TSS visa holder currently working for them. Any employer who is currently approved to sponsor an overseas worker who is not accredited and does not have a visa holder currently working for them is not captured and the Department is unable to produce a report that captures this information.

The Department has undertaken reasonable searches for documents within the scope of your request, including interrogation of standard record-keeping systems, for a list of standard (non-accredited) sponsors but does not hold an existing discrete document that contains this information.

The Department has considered whether it can extract a list of standard (non-accredited) sponsors, in accordance with section 17(1) of the FOI Act.

The obligation for retrieving or collating information stored in a computer system arises if:

- the Department could produce a written document containing the information using a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information, and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s17(2))

In *Collection Point Pty Ltd v Commissioner of Taxation* the full bench of the Federal Court decided that if a new computer program is required to be written to produce the document then a computer is not being used in a manner that is ordinarily available to the agency because an extraordinary step is required to be taken¹.

The data you have requested is of a detail that cannot be reported on from the Department's computer systems. Either the data is not collected to that granular detail, or it is not possible to extract the data using a computer system in a manner that is ordinarily available to it.

I am satisfied that the Department is not able to produce a list of standard (non-accredited) sponsors, in a discrete form using a computer or other equipment ordinarily available to it.

5 Decision

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in full, being the list of 'active sponsors'.

6 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

¹ *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 [20].

7 Your Review Rights

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/internal-review>.

8 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

9 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

[signed electronically]

Louise

Position number 60081621

Authorised FOI Officer - Freedom of Information

Privacy, FOI and Records Management Branch | Legal Group

Department of Home Affairs | www.homeaffairs.gov.au

Email foi@homeaffairs.gov.au