



19 August 2015

**In reply please quote:**

FOI Request FA 15/07/01497

File Number ADF2015/39044

Pep Jan  
Right to Know

Sent via email: [foi+request-1140-bc4694bb@righttoknow.org.au](mailto:foi+request-1140-bc4694bb@righttoknow.org.au)

Dear Pep Jan

**Freedom of Information request – Decision on request - Access**

This letter refers to an access request received under the *Freedom of Information Act 1982* (the Act) received on 20 July 2015.

You requested access to the following information:

*I would like to request a Modified Non-Return Rate report that shows the visa overstay statistics by nationality for 2014 and if available for the first quarter of 2015.*

**Decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests.

My decision is to refuse access under section 24A(1) of the FOI Act. A statement of reasons for my decision is below.

**FREEDOM OF INFORMATION ACT 1982 (FOI Act)**

**SECT 24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

*Document not received as required by contract*

- (2) *An agency may refuse a request for access to a document if:*
- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and*
  - (b) the agency has not received the document; and*
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.*

### **Section 17 of the FOI Act**

I note s.17(1) of the FOI Act provides that if a request is for information held in an agency's computers and the agency can produce a document, using equipment and processes 'ordinarily available' for producing such documents; then the request must be treated as a request for documents that existed at the time of the request. The agency must produce the documents for the purpose of responding to the FOI request.

### **Advice from relevant business area**

I have consulted with the relevant business area that routinely deals with information subject to your request. The advice received by the business area is that the Department last produced this data and published it on the Department's website on 30 June 2013. The Department's functionality that supported production of the modified non-return report has not been subsequently maintained therefore the report cannot be produced.

### **Review rights**

#### Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department my decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

Or by email to: [foi@border.gov.au](mailto:foi@border.gov.au)

#### 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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at [www.oaic.gov.au](http://www.oaic.gov.au).

### **How to make a complaint about the handling of this FOI request**

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is also available at [www.oaic.gov.au](http://www.oaic.gov.au).

**Contacting the FOI Section**

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Shannon Bevan  
Authorised decision maker  
Freedom of Information Section  
Department of Immigration and Border Protection  
Email           foi@border.gov.au

**Attachments:**

- ✓ Extract from relevant legislation

## **Extract of relevant legislation**

### **6C Requirement for Commonwealth contracts**

- (1) This section applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.
- (2) The agency must take contractual measures to ensure that the agency receives a document if:
  - (a) the document is created by, or is in the possession of:
    - (i) a contracted service provider for the Commonwealth contract; or
    - (ii) a subcontractor for the Commonwealth contract; and
  - (b) the document relates to the performance of the Commonwealth contract (and not to the entry into that contract); and
  - (c) the agency receives a request for access to the document.

### **23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

### **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

#### *Document lost or non-existent*

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  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

#### *Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.