



Australian Government
Attorney-General's Department

13/8922

1 August 2013

Mr Malcolm Blaney

Sent by e-mail only: foi+request-121-b6bc46df@righttoknow.org.au

Dear Mr Blaney

Freedom of Information Request no. 13/060

I am writing to advise you of my decision in relation to your request for internal review of a decision by the Attorney-General's Department to refuse access to documents you requested under the *Freedom of Information Act 1982* (the FOI Act).

Background

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions on behalf of the Attorney-General's Department in relation to FOI requests.

On 29 May 2013 you made a request to the Department for:

all documentation, leading to the Department's final decision in regards to the adverse security assessment for the asylum seeker from Sri Lanka Ranjini, who was returned to indefinite detention in May 2012.

On 1 July 2013 the Department advised you that – following an electronic search of documents and making inquiries of staff – it had not identified any documents that fell within the scope of your request. The Department determined that the documents you described did not exist, and decided to refuse your request for access in accordance with subsection 24A(1) of the FOI Act.

In your email of 2 July 2013 you indicated you did not believe the reasons provided for refusal. In response to the Department's advice that the Australian Security Intelligence Organisation (ASIO) is the decision-maker on security assessments and that this Department does not play a role in the security assessment process, you claimed this was 'misleading' on the basis that 'ASIO is under the authority of the Attorney-General's Department'. You said you 'would like to know why the Department does not feel the need to understand the decisions made by an organisation that the Department is responsible for'.

Decision

I have reviewed the earlier decision in this matter. In the course of doing so I have arranged further and more extensive searches of the records held by this Department.

I have decided to affirm the decision to refuse access on the basis I am satisfied that the documents you requested do not exist.

Reasons for decision

The reason for this review decision is that I consider that all reasonable steps have been taken to find documents that may fall within the scope of your request and no such documents have been found. The Attorney-General's Department is not responsible for making 'a final decision' in relation to adverse security assessments for asylum seekers. Accordingly, I am satisfied that there are no documents which led to a final decision by the Department on this issue.

ASIO is a government agency which has been continued in existence under the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act). Its functions and powers are determined by the Parliament of Australia and set out in legislation. Subsection 8(1) of the ASIO Act provides that the Organisation is under the control of the Director-General of Security, who is responsible to the Minister. The Attorney-General is the relevant Minister of State under the current Administrative Arrangements Order.

ASIO's functions include providing 'security assessments' to other Commonwealth agencies. This term is relevantly defined in subsection 36(1) of the ASIO Act to mean 'a statement in writing furnished by the Organisation to a Commonwealth agency expressing any recommendation, opinion or advice on ... whether it would be consistent with the requirements of security for prescribed administrative action to be taken in respect of a person...'. The term 'prescribed administrative action' is defined to include 'the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act'. Security assessment advice prepared by ASIO in relation to matters arising under the Migration Act would normally be provided to the Department of Immigration and Citizenship rather than to the Attorney-General's Department.

Material taken into account

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

- the representations included in your email requesting an internal review
- the provisions of the FOI Act (and, in particular, section 24A of that Act)
- the results of searches conducted of documents held by the Department
- advice from the relevant line area confirming that ASIO, not the Attorney-General's Department, is responsible for the provision of security assessments, and that the Attorney-General's Department does have responsibility for decisions in relation to security assessments relating to matters arising under the Migration Act, and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Information Commissioner review

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

- online: <https://forms.business.gov.au/aba/oaic/foi-review/>
- email: enquiries@oaic.gov.au
- post: GPO Box 2999, Canberra ACT 2601
- in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website: <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please contact the Department by email at foi@ag.gov.au.

Yours sincerely



Steven Marshall
Acting Corporate Counsel
Attorney-General's Department