



20 April 2016

In reply please quote:

FOI Request FA 15/12/01767
File Number ADF2015/70048

To Ben Fairless
Right to Know

By email: foi+request-1455-be969f7d@righttoknow.org.au

Dear Mr Fairless

Freedom of Information request – decision on request

This letter refers to your request received on 25 December 2015 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

Can you please provide a copy of documents which contain the below information:

- 1. Details of requests received by the Freedom of Information and Privacy section of the Department, categorised by month*
- 2. Details of requests completed by the Freedom of Information and Privacy section of the Department, categorised by month*
- 3. Details of requests completed by the Freedom of Information and Privacy section of the Department, categorised by month which were processed as Administratively*
- 4. Internal correspondence in relation to the current Automatic Reply which is sent from the FOI Mailbox.*

I have numbered your request for ease of reference.

On 5 January 2016 I wrote to you to clarify the terms of your request. You responded on this date and provided the following clarification on the terms of your request:

Can confirm I'm looking for data in 2015.

I would like the names or positions of non-SES staff but other personal info can be excluded.

Processing time

According to section 15AA of the FOI Act, the Department must process a request within a 30 day timeframe. I note that your request was due on 24 January 2016. The Department apologises for the delay in processing your request.

Section 15AC of the FOI Act provides that, by failing to process your request within the 30 day timeframe, the Department is deemed to have refused your access request.

However, the Department is continuing to process your request on an administrative basis, and according to the procedures and scheme provided by the FOI Act.

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 documents or to amend or annotate Departmental records.

Information considered

In reaching my decision, I have considered the following:

- the *Freedom of Information Act 1982*;
- the Australian Information Commissioner's guidelines relating to access to documents held by government;
- the terms of your request; and
- Departmental documents (identified in the schedule).

Decision

In accordance with section 17 of the FOI Act, the Department has used its computer system to prepare one document that contains information subject to parts 1 and 2 of your request.

The Department has identified seven (7) documents, including the document created under section 17, that fall within the scope of your request. These were in the possession of the Department at the time of your request.

Part 3 of your request is seeking access to information regarding the release of documents from the FOI Section under an administrative access scheme. The FOI Section is unable to produce this data as the system does not categorise this type of information. For your reference an administrative release of documents can occur in a number of ways, for example: as part of the processing of an FOI request; or referred to the responsible area to complete.

My decision in relation to the documents which come within the scope of your request is:

- Release one (1) document in full
- Release five (5) documents in full with deletions applied under s.22(1)(a)(ii)
- Delete one (1) document in full under s.22(1)(a)(ii)
- Refuse access to part 3 of your request

I have provided the reasons for my decisions below.

A schedule of the documents is at **Attachment A** for your reference.

Reasons for Decision

I have considered the documents within the scope of your request and applied deletions in part as detailed in the schedule at **Attachment A**. You should read the schedule in conjunction with my reasoning below.

Deletion of exempt or irrelevant material under s.22 of the FOI Act

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act. When a document only contains a deletion of irrelevant material under s.22(1)(a)(ii) the information is considered to have been released in full.

I have decided that parts of the documents would disclose information that could reasonably be regarded as irrelevant to your request. This information consists of third party personal details, staff telephone numbers and emails which you have agreed do not fall within the scope of your request. However, in accordance with the advice you provided in your email dated 5 January 2016 staff names remain within the documents.

Further, I have deleted metadata from the documents under s.22(1)(a)(ii). For your reference the metadata was attached to the emails during the preparation of the documents. This information was not a part of the email correspondence at the time that it was created.

Refuse access if documents do not exist – section 24A

Section 24A(1) of the FOI Act provides that an agency may refuse access to a request if the decision maker is satisfied that all reasonable steps have been taken to find the requested document but that the document does not exist.

I have considered the categories of data collected within the system used by the FOI Section and its reporting capabilities against part 3 of your request. I am satisfied that the Department does not hold any discrete documents (electronic or hard copy) that fall within the scope of part 3 of your request.

Further, I am satisfied that the Department cannot create discrete documents to meet your request *by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating the stored information* (s.17(1)(c)(i) of the FOI Act). Therefore, I am satisfied that s.17(1) of the FOI Act does not apply to your request.

This is because the system does not capture when an administrative release has occurred to respond to, or as part of, a request that was submitted to the FOI Section for processing.

I am satisfied that the Department has taken all reasonable steps to find documents containing the information that you requested.

My decision is to refuse access to part 3 of your request as documents do not exist (s.24A(1)(b)(ii) of the FOI Act).

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department of 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

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.

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

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department of Immigration and Border Protection in relation to your request.¹

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

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

- Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

¹ On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the Office of the Australian Information Commissioner (OAIC), has not yet been considered by the Senate. The OAIC therefore remains operational until further notice. Information on the OAIC public website advises that Information Commissioner reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

There is no particular form required to make a complaint to the Ombudsman or 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 Immigration and Border Protection as the relevant agency.

Contacting the FOI Section

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

Yours sincerely



Janelle Raineri
Authorised decision maker
Freedom of Information Section
Department of Immigration and Border Protection

Telephone 02 6264 1580
Email foi@border.gov.au

Attachments

- Attachment A - Schedule of Documents
- Attachment B – Extract of relevant legislation
- Documents released under the FOI Act



Attachment A

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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Document No.	Folios	Description	Decision	Legislation
1	1	Number of requests received and finalised during 2015	Released in full	
2	1	Email dated: Monday, 16 November 2015 8:40 AM	Released in full with deletions applied	s.22(1)(a)(ii)
3	2	Attachment 1 to email above Form 1023 Notification of incorrect answer(s)	Released in full with deletions applied	s.22(1)(a)(ii)
4	1	Attachment 2 to email above Third party document	Deleted in full	s.22(1)(a)(ii)
5	1	Email dated: Monday, 16 November 2015 8:52 AM	Released in full with deletions applied	s.22(1)(a)(ii)
6	1	Attachment to email above Draft automated email	Released in full with deletions applied	s.22(1)(a)(ii)
7	2	Email dated: Monday, 16 November 2015 11:19 AM	Released in full with deletions applied	s.22(1)(a)(ii)



Attachment B – Extract of relevant legislation

17 Requests involving use of computers etc.

- (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.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and

- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

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.