



18 March 2016

In reply please quote:

FOI Request FA 16/03/00125

File Number ADF2016/9716

Ms Ariana Norton
Right to Know

Sent via email: foi+request-1665-58b3cd12@righttoknow.org.au

Dear Ms Ariana

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 28 February 2016.

You requested access to the following information:

... any records and/or documents the Department has pertaining to the deportation of criminally insane New Zealand nationals during the month of June, 2015 and between 1/1/16 and 1/2/16.

Advice

I consulted within the Department regarding the documents in question. The relevant business area has advised there was no instance of the removal of New Zealand nationals who meet the following criteria:

- deportation;
- during the month of June 2015 and between 1 January and 1 February 2016; and
- 'criminally insane'.

Decision

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents. My decision is to refuse access under section 24A(1) of the Act. My reasons are set out below.

Section 24A(1) of the 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 documents but that the documents do not exist.

Based on advice from the relevant business area within the Department, I am satisfied that the Department has taken all reasonable steps to find any relevant documents, as required by s.24A(1)(a) of the Act. I am further satisfied that the Department does not hold any documents that fall within the scope of your request. Therefore I am refusing your request for access under s.24A(1)(b)(ii) of the Act, on the basis that the documents do not exist.

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

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 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.

Yours sincerely



Marianne Nolte-Crimp
Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

Attachments:

- ✓ Extract from relevant legislation

Extract of relevant legislation

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

- (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.