



In reply please quote:

FOI Request: FA 16/11/00429
File Number: ADF2016/66799

24 November 2016

Citizen

Sent via email only: foi+request-2678-b4e74948@righttoknow.org.au

Dear Citizen

I refer to your email dated 6 November 2016 in which you request access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

Scope of Request

You have requested access to the following documents held by the Department:

'documents or correspondence that reveal:

- (1) the number of serving Service personnel with criminal convictions;*
- (2) the ranks/gradings of those personnel,*
- (3) the nature/type of convictions outlined in (1),*
- (4) the number of personnel dismissed from the Service following criminal convictions from January 1 2013- November 1 2016,*
- (5) the nature/type of criminal convictions resulting in dismissal in (4).'*

This letter is to notify you of the decision on access to the documents subject to your request.

Decision on access

I am authorised under section 23 of the FOI Act to make decisions to release and to refuse access to exempt documents.

The Department has undertaken searches to identify any documents that would be relevant. After consulting with relevant business areas I am satisfied that no discrete written documents (electronic or hard copy) are in possession of the Department that contain the details of your FOI request.

The information that you are seeking is generally recorded on a case-by-case basis by the relevant business area conducting integrity checks on Departmental employees, however the statistical data regarding this information is not collated or stored in any Departmental database.

Application of s.17 of the FOI Act to your request

Under s.17(1) of the FOI Act, where a discrete document relevant to the request does not exist, the agency is to consider whether a document addressing the request could be produced through the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information.

Advice from the relevant business area is that the data sought is not readily producible from systems in a way that would provide all or part of the information you are seeking.

The relevant business area would be required to perform the following tasks to produce the data you seek:

- manually/physically search all personnel security files held by the Department (approximately 30,000 records – with each record up to 300 pages). While some records are in digital format they are not in a searchable digital format thus still require a full manual review;
- manually cross-reference each record with current Department Human Resource data to ensure that records returned only relate to serving personnel; and
- manually compile a record of each category of offence and manually count/log each relevant record.

The business area estimates that the time required to undertake the compilation of this data would take on average 30 minutes per file, or approximately 15,000 hours in total.

Given the advice of the relevant business area I am satisfied that production of the data from systems would be an unreasonable diversion of the Department's resources.

Section 17(2) of the FOI Act provides that:

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.

Refusal under s24A of the FOI Act

I have therefore decided that there were no documents in the possession of the Department on 6 November 2016 within scope of your request and production of the documents would represent an unreasonable diversion of the Department's resources. Your request is therefore refused under section 24A of the FOI Act.

Legislation

I have attached an extract of the relevant provision of the FOI Act for your information at **ATTACHMENT A**.

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.reviews@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.

Contacting the FOI Section

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

Yours sincerely

(signed electronically)

Rudi RAJIC
Authorised decision maker
Freedom of Information Section
Department of Immigration and Border Protection
Telephone (02) 6264 1757
Email foi@border.gov.au

Attachments:

- ✓ Extract from relevant legislation

ATTACHMENT A

Section 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.

Section 24A - 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.