



5 April 2017

Mr Tony Magrathea

Email: [foi+request-3192-3e8a70ec@righttoknow.org.au](mailto:foi+request-3192-3e8a70ec@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 17/03/00191

File Number: ADF2017/25794

Dear Mr Magrathea

**Access Decision - Freedom of Information (FOI) request**

This letter refers to an access request received under the *Freedom of Information Act 1982* (the FOI Act) on 5 March 2017, seeking access to:

*'a copy of the rules staff used and referred to when processing citizenship by descent forms in 1981. In particular those rules relating to a child born overseas to an Australian mother where the child was an adult in 1981.'*

**2 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.

**3 Information considered**

In reaching my decision, I have considered the following:

- the terms of your request;
- the *Freedom of Information Act 1982*;
- consultation with relevant business area; and
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government.

**4 Decision on access**

My decision is to refuse access under section 24A of the FOI Act. My reasons are set out below.

## 5. Reasons for decision

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document either cannot be found or does not exist.

The documents to which you are seeking access to are policy documents which would have been in place in 1981, which is in excess of 35 years ago. Any documents that existed at that time would be unavailable now in the form that they took at that time and would have been destroyed according to Departmental Records Disposal Authorities and the *Archives Act 1983 (Cth)*.

Citizenship Operations, which provides operational support services to the citizenship programme have confirmed that searches using the Department's Total Records Information Management System (TRIM) returned no results for citizenship policy related files within the scope of your request.

Further searches have also been undertaken in TRIM, using the following search parameters:

- "Citizenship 1981"
- "Citizenship descent"
- "Citizenship section 11"

We did not locate any documents that fall within the scope of your request. It should be noted that TRIM has been used by the Department as its electronic document management system commencing in approximately 2002.

Please note that a Federal Register of Legislation can be found at <https://www.legislation.gov.au/>.

I am satisfied that the Department has taken reasonable searches in relation to your request, and found no documents relevant to your request.

In order to assist you, the Department is able to provide you with a copy of the relevant Section of the Act as it was in 1981, and I attach a copy of the relevant pages for your reference.

## 5 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>.

If you are unable to access the legislation through this website, please contact our office for a copy.

## 6 Your Review Rights

### Internal review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this 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 2616

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).

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

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

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

Phone 1300 363 992 (local call charge)

Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to 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.

**8 Contacting the FOI Section**

If you wish to discuss this matter, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au)

Yours sincerely



Julia Wu  
FOI Officer/Freedom of Information Section  
Freedom of Information, Privacy & Records Management Branch  
Corporate Services Division Corporate Group  
Department of Immigration and Border Protection  
Email [foi@border.gov.au](mailto:foi@border.gov.au)

9. A law of the Commonwealth or of a Territory in force at 26th January, 1949, has effect, unless provision to the contrary has been or is made, in relation to Irish citizens who do not have the status of British subjects in like manner as it has effect in relation to persons who have that status.

Application of certain laws to Irish citizens who do not have the status of British subjects.

Substituted by No. 22, 1969 s. 6; amended by No. 99, 1973 s. 20.

### PART III—AUSTRALIAN CITIZENSHIP

#### *Division 1—Citizenship by Birth or Descent*

10. (1) Subject to this section, a person born in Australia after the commencement of this Act shall be an Australian citizen by birth.

Citizenship by birth.

(2)<sup>3</sup> A person shall not be an Australian citizen by virtue of this section if, at the time of his birth, his father—

Substituted by No. 11, 1966 s. 4.

(a) was not an Australian citizen;

(b) was not ordinarily resident in Australia; and

(c) was—

(i) a person who was entitled in Australia to any immunity from suit or other legal process by virtue of any law relating to diplomatic privileges and immunities (including any law relating to privileges and immunities attaching to persons connected with the Governments of other parts of the Queen's dominions or with international organizations); or

(ii) a consular officer of a foreign sovereign power.

(3)<sup>3</sup> A person shall not be an Australian citizen by virtue of this section if, at the time of his birth, his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

Added by No. 11, 1966 s. 4.

11. (1) A person born outside Australia on or after 26th January, 1949, is an Australian citizen by descent if—

Citizenship by descent.

(a) in the case of a person born in wedlock—at the time of the birth his father or mother was an Australian citizen; or

Substituted by No. 22, 1969 s. 7 Sub-section (1) amended by No. 99, 1973 s. 20.

(b) in the case of a person born out of wedlock—at the time of the birth his mother—

(i) was an Australian citizen; or

(ii) was, or had the status of, a British subject and was ordinarily resident in Australia or New Guinea.

and, in either case, the birth was or is registered at an Australian consulate within five years after its occurrence or within such further period as the Minister allowed or allows.

(2) Where, at the time of the birth of a person (in this sub-section referred to as "the child") born in wedlock, one of the parents of the child was not an Australian citizen, the birth of the child shall not be registered at an Australian consulate unless the person applying to register the birth declares in writing to the person to whom the application is made, or otherwise satisfies that person, that—

- (a) there is not, at the time of the application, a subsisting court order giving custody of the child exclusively to a person or persons other than the parent of the child who was an Australian citizen at the time of the birth; or
- (b) the parents of the child are dead.

(3) The birth of a person (in this sub-section referred to as "the child") born out of wedlock shall not be registered at an Australian consulate unless the person applying to register the birth declares in writing to the person to whom the application is made, or otherwise satisfies that person, that—

- (a) there is not, at the time of the application, a subsisting court order giving custody of the child exclusively to a person or persons other than the mother of the child; or
- (b) the mother of the child is dead.

(4) The validity of the registration at an Australian consulate of the birth of a person is not affected by a contravention of either of the last two preceding sub-sections in relation to that registration.

Division 1A  
(sections  
11A-11C)  
repealed by  
No. 99, 1973,  
s. 7.

\* \* \* \* \*

Division 2  
substituted by  
No. 99, 1973,  
s. 8.

## *Division 2—Grant of Australian Citizenship*

Application  
of Division.  
Substituted by  
No. 99, 1973,  
s. 8.

12. This Division does not apply to a person who is an Australian citizen.

Declaration  
of intention  
to apply for,  
and  
application  
for,  
certificate of  
Australian  
citizenship.  
Substituted by  
No. 99, 1973,  
s. 8.

13. (1) A person may, not earlier than one year after his entry into Australia, make a declaration in the approved form of his intention to apply for the grant to him of a certificate of Australian citizenship.

(2) A person may apply in the approved form for the grant to him of a certificate of Australian citizenship.

(3) An application under sub-section (2) may be made whether or not the applicant has previously made a declaration under sub-section (1), but shall not be made more than six months before the earliest date on which the Minister, under the provisions of section 14, could become empowered to grant the certificate.