



1 June 2017

In reply please quote

FOI Request: FA 17/04/00288
File Number: ADF2017/38167

Mr Robert Hudson
IT Professionals Association

By email: foi+request-3350-f87ae67b@righttoknow.org.au

Dear Mr Hudson

Freedom of Information request – decision on request

This letter refers to your request received on 6 April 2017 seeking access under the *Freedom of Information Act 1982* (the Act) to the following:

Details of the 457 Visas granted over the last 18 months for the following ANZSCO Unit Groups:

- 2621 - Database and Systems Administrators
- 2631 - Computer Network Professionals
- 2632 - ICT Support and Test Engineers
- 3131 - ICT Support Technicians

The details we are seeking are:

1. *Descriptions of the roles that were filled*
2. *The wages that were / are being paid*
3. *The market testing that was done to prove that local workers were not available to fill the roles*
4. *The names of the Companies involved and the number of 457 Visas they were granted*

Authority to make decision

I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (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 terms of your request
- The *Freedom of Information Act 1982*
- Departmental files identified
- The Australian Information Commissioner's guidelines relating to access to documents held by government (the OAIC Guidelines)

Legislation

A copy of the FOI Act is available for your reference from:

www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal

Documents in scope

Section 17 of the FOI Act provides that where an agency can produce a written document containing the information in discrete form by the use of a computer, and the work required would not substantially and unreasonably divert resources of the agency from its other operations, the agency shall deal with the request as if it were a request for access to a written document so produced.

The Department has created one document that is relevant to the scope of your request. The document is provided at **Attachment A** – Documents Released.

Decision

I have decided to partially exempt the document that falls within the scope of your request from disclosure under the FOI Act. The reasons for my decision are set out below.

Reasons for decision

The document at **Attachment A** provides statistical information regarding the number of Temporary Work (Skilled) visas (subclass 457) granted over the last 18 months in the ANZSCO groups specified in your FOI request.

Some of the additional details about these visas included in this document have, however, been exempted for the reasons outlined below.

Part 1 and 3: descriptions of the roles that were filled; the market testing that was done to prove that local workers were not available to fill the roles

No discrete document currently exists in the possession of the Department that contains the data you have sought in parts 1 and 3 of your request.

The Department is not able to produce the data from its computer systems as the data is not captured by the Department in a way that could be reported on. Whilst the data you have requested may exist within the Department's computer systems, the work required to produce that data would interfere unreasonably with the operations of the Department. I am satisfied that the Department is not required to produce a document by use a computer under section 17 of the FOI Act.

Access to the information you have requested is therefore refused under section 24A(1) of the FOI Act.

Parts 2 and 4: the wages that were / are being paid; the names of the Companies involved and the number of 457 Visas they were granted

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce part of the one document that contains the requested information where able to do so. I have decided to partially exempt this part of your request from disclosure under the FOI Act. The reasons for my decision are set out below.

Section 47E(d): Operations of an agency

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Those operations include the management of various visa programs. Any prejudice to the effectiveness of the methods and procedures used in undertaking those functions could reasonably be expected to result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the methods and procedures used within those operations would result in the need for the Department to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Parts of the document that falls within the scope of your request contains the following information:

- Sponsor Name
- Sponsor Case ID (CID)
- Sponsor ABN

The Sponsor CID is the Department's unique identifier. If Sponsor CIDs were disclosed it would adversely affect how the Department manages its sponsor nomination applications. Any third parties with access to the Sponsor CID would be able to lodge a nomination application and gain access to the sponsor's details. Any third parties with access to the Sponsor's name or ABN would also be able to identify the business. This would result in the Department having to make a substantial change to the procedures it has in place in relation to those operations to avoid undermining the effectiveness of the Department to perform its visa management functions.

The disclosure of the names and ABN of sponsors would also prejudice the effectiveness of the Department's ability to manage its various visa programs. Individuals and businesses interact with the Department in relation to visa applications on the basis that they are providing their information to the Government for official purposes. Any disclosure of that information to any third parties without their consent could prejudice the effectiveness of the operations of the Department in the management of its visa programs, which are an integral part of its role of managing the security and integrity of Australia's borders.

There is also a preventive element to my decision, as I consider that the businesses and their employees could potentially be approached by members of the public opposed to the idea of employing people on subclass 457 visas, and such unsolicited approaches could potentially deter them from undertaking such activities in the future. This would have the effect of undermining the confidence of businesses and individuals in their interactions with the Department, which in turn could potentially impact how the Department operates.

I am therefore satisfied that the information marked 's47E(d)' in the documents is conditionally exempt under s.47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest. I have considered the public interest factors below.

Section 11A: Public Interest Test

In relation to documents which I have decided have satisfied the statutory requirements under section 47E(d), I am required under section 11A(5) of the FOI Act to consider whether access to the conditionally exempt information would be contrary to the public interest. In considering this, I must be satisfied that access to the conditionally exempt document would be, *on balance*, contrary to the public interest (emphasis added).

In my application of the public interest test, I note the objects of the FOI Act and the importance of the other factors outlined under section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- Promote the objects of this Act (including all the matters set out in sections 3 and 3A)
- Inform debate on a matter of public importance
- Promote effective oversight of public expenditure
- Allow a person to access his or her own personal information.

In favour of disclosure, I acknowledge that there is:

- A general public interest in making information held by the Government accessible to the public
- An expectation that Government spending should be open and accountable, relevantly the type of services being provided by the Department for managing temporary skill shortages in Australia
- The need for openness and accountability of the department's operations relevantly, delivering the 457 visa programme.

I have also considered the factors that weigh against the release of the conditionally exempt information in the document. In favour of non-disclosure, the exempted information would:

- Undermine the way the Department manages the 457 visa programme
- Adversely impact the Department's operation if management of businesses information expected to be confidential is made known to the public
- Affect the ability of the Department to perform as efficiently if certain existing processes and procedures are made known to the public beyond a need to know basis
- Incur unnecessary costs to change those current operational procedures.

I have also had regard to the provisions under section 11B(4) outlining the factors that are irrelevant to my decision. These are as follows:

- Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- Access to the document could result in any person misinterpreting or misunderstanding the document
- The author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- Access to the document could result in confusion or unnecessary debate.

I have not taken into account any of these factors in my decision.

Upon balancing all of the above relevant public interest criterion, I am satisfied and have decided that the disclosure of the conditionally exempt material is not in the public interest and therefore is exempt from disclosure under 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.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 your 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, you may contact me using the details provided below.

Yours sincerely



Ms Cathy Milfull
Authorised Decision Maker
Director, 457 Programme Management
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachments

- Attachment A – Documents Released