



29 August 2017

In reply please quote

FOI Request FA 17/06/00398
File Number: ADF2017/61807

Mr Kieren Crossland
Sent via email: foi+request-3626-2785e081@righttoknow.org.au

Dear Mr Crossland

Freedom of Information request – decision on request

This letter refers to your request received on 12 June 2017 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

*"...documents relating to the feedback form the public consultation of the
"Strengthening the test for Australian citizenship" paper announced on 20/04/2017.*

*I do not seek the feedback of any individual or personal information, but request the
following:*

- 1) The number of submissions received*
- 2) The number of submissions representing multiple parties viewpoints, for example
petitions, and how many individuals were represented by each*
- 3) How the feedback was considered by DIBP and integrated into the legislation*
- 4) The count of supportive and non-supportive submissions relating to:*
 - a. The extension to the PR residency requirement from one to four years*
 - b. The retrospective application of the legislation from the date of the
announcement*
 - c. A transitional arrangement as an alternative to a retrospective for existing visa
holders*
 - d. Introduction of the English language test".*

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.

My decision is to refuse access under section 24A(1) [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act. My reasons are set out below.

Information considered

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Consultations with relevant business areas and officers; and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

Legislation relevant to your request

In order to interpret your request, I have considered the following relevant parts of the FOI Act (emphasis added in bold):

3 Objects—general

*The objects of this Act are to give the Australian community **access to information** held by the Government of the Commonwealth, **by:** requiring agencies to publish the information; and **providing for a right of access to documents.***

4 Interpretation

In this Act, unless the contrary intention appears:
A document includes:

any of, or any part of any of, the following things:

- *any paper or other material on which there is writing;*
- *a map, plan, drawing or photograph;*
- *any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;*
- *any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;*
- *any article on which information has been stored or recorded, either mechanically or electronically;*
- *any other record of information; or*
- *any copy, reproduction or duplicate of such a thing; or*
- *any part of such a copy, reproduction or duplicate;*

Access to documents rather than information

With the legislation and the above interpretation of a 'document' in mind, I note: The FOI Act provides for access to 'discrete' documents (electronic or hard copy). Based on advice of the business area, I am satisfied that the Department does not hold any discrete documents (electronic or hard copy) that fall within the scope of your request. The Department has not collated or retained any data from existing sources that would capture the information or provide the analysis of the data which you are seeking.

Decision

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 documents and determines that documents do not exist. I am satisfied that the Department has taken all reasonable steps to locate documents and that the Department does not hold any documents that fall within the scope of your request.

The relevant business area who is managing the paper titled 'Strengthening the Test for Australian Citizenship', conducted the following searches:

- The relevant Email folder with all received submissions
- Records Manager system files set up for the purpose of the paper
- Group drive folders set up for the purpose of the paper
- Cabinets, bookshelves and safes holding hard copy documents for the section
- Consultation within the section and the branch.

The FOI Section took the following actions to search and retrieve the documents you are seeking:

- Records Manager system searches using the key words 'Strengthening the Test for Australian Citizenship'.
- Parliamentary Document Management System (PDMS) system searches using the key words 'Strengthening the Test for Australian Citizenship'.
- Consultation with the relevant business area on multiple occasions via email, telephone and face to face meetings, in relation to the documents held, to determine if those documents fall within the scope of the request.

Given the above findings, I am satisfied that all relevant areas of the Department have conducted reasonable searches for documents falling within the scope of your request. I am also satisfied that all reasonable steps were taken by the relevant areas to find the documents. Further, the relevant business area confirmed that the statistical analysis you are seeking has not been conducted within the Department, nor have they been requested from the Senate Committee. As such, documents containing analysis you have sought have not been prepared. I am therefore satisfied that the documents you are seeking do not exist, as set out in s.24A(1)(b)(ii) of the FOI Act. I therefore refuse access to your request on the grounds that no documents exist.

Section 17 of the Act [Requests involving use of computers etc]

I have also considered the application of s.17 [Requests involving use of computers etc] of the FOI Act. 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*" as outlined in section 17(1)(c)(i) of the FOI Act. Therefore, I am satisfied that s.17(1) of the FOI Act would not apply to your request.

Furthermore, in the event that s.17(1) of the FOI Act could be potentially be applied to satisfy your request, and if the Department was then required to create such documents to respond to your request, I am satisfied that, based on the advice from the relevant business area, creating documents to meet your request "*would substantially and unreasonably divert the resources of the agency from its other operations*".

In order to capture the information you are seeking, by the evaluation of data and creation of the document(s) you have sought, the Department would need to:

- Examine each submission and identify relevant information that falls within the scope of your request;
- I estimate that an officer would require 600 hours to complete this task (3 minutes per page);
- Evaluate the information collected and prepare documentation to present the results. I estimate that an officer would require at least 4 hours to complete this task. Note that this calculation does not include quality assurance and clearance processes;
- Prepare a schedule of documents which is calculated at 30 minutes per 10 pages, requiring an officer approximately 600 hours work, and
- Prepare a decision record, outlining the exemptions applied (if any). I consider this will take an officer an additional 2 hours.

Considering the above information, I estimate that it would take in excess of 1,206 hours (approximately 50 days) for a dedicated officer to process this request. This would substantially and unreasonably divert the resources of the Department from its other operations. I therefore consider that s.17(2) of the FOI Act would apply to this request and as such the Department would not be required to comply with s.17(1) of the FOI Act, in creating the documents to process your request.

Further information

The Department received an extensive number of submissions in response to the paper 'Strengthening the test for Australian Citizenship'. The number of submissions and further information is available in the Department's Submission to the Senate Committee at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CitizenshipBill2017/Submissions (submission number 453).

Please also note that some of the submissions provided in response to the paper 'Strengthening the Test for Australian Citizenship' are now available publicly on the Department's website at : <https://www.border.gov.au/Trav/Citi/whats-new>

Review rights

Internal review

If you disagree with the decision, you have the right to apply for an internal review of the decision. If you wish to make a request for internal review this must be sent within 30 days of 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.

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 Australian Information Commissioner for a review of the decision. You must apply in writing within 60 days of this notice. For further information about review rights under the FOI Act 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.

FOI Legislation

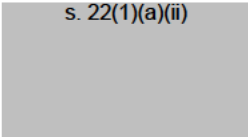
A copy of the FOI Act is available for your reference from:
www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal

Contacting the FOI section

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

Yours sincerely

s. 22(1)(a)(ii)



Karen Tullloch
Authorised decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au