



13 October 2017

BY EMAIL: foi+request-3743-23e75437@righttoknow.org.au

In reply please quote:

FOI Request: FA 17/07/00782

File Number: ADF2017/78803

Dear Mr Hirsch

Freedom of Information (FOI) request - Access Decision

On 24 July 2017, the Department of Immigration and Border Protection (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

During Senate Estimates on 27 February 2017, the Department outlined its new visa risk assessment digital capability. In particular, the Senate Estimates report notes that:

The department provided an update on its new visa risk assessment digital capability, an analytics intelligence program that uses 'predictive analytics, parameters, profiling [and] algorithms' to consolidate and analyse data in order to assess risk across entire visa classes. At a cost of \$100 million, it is anticipated that the program will be rolled out in a pilot form this year to assess risks against selected visa categories.

I request all documents related to this new visa risk assessment digital capability, the analytics intelligence program, and the pilot that will be rolled out this year.

On 1 August 2017 the Department issued you a notice under section 24AB of the FOI Act. In response, you requested the following revised scope:

I request reports and briefings to various sources relating to the Visa Risk Assessment digital capability. I am not requesting documents relating to the entire visa risk assessment, but only the new digital capability pilot due to be rolled out this year, as outlined during Senate Estimates above. That includes reports and briefings regarding "predictive analytics, parameters, profiling [and] algorithms..

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 records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- the Department's guidance material on the FOI Act

4 Documents in scope of request

The Department has identified 48 documents as falling within the scope of your request. These documents were in the possession of the Department on 24 July 2017 when your request was received.

The documents consist of the following:

- Weekly Visa Risk Assessment (VRA) Sub Programme status reports
- Monthly VRA status reports
- Senate Estimates - Back pocket briefs and background material
- Training presentations
- Speaking notes for VRA presentations to stakeholders.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Exempt 48 documents in full from disclosure

Detailed reasons for my decision are set out below.

6 Reasons for Decision

For the reasons set out on the following pages, I have exempted the documents in full from disclosure.

7 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33(a)(i) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the security of the Commonwealth.

For the reasons set out below, I consider that there are real and substantial grounds for expecting that the disclosure of the documents exempted under section 33(a)(i) would cause damage to the security of the Commonwealth.

Security

Security is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time.¹ 'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as follows

- (5) *Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:*
 - (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and ...*

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant.² That Act defines 'security' as:

- (a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*
 - (i) *Espionage*
 - (ii) *Sabotage*
 - (iii) *Politically motivated violence*
 - (iv) *Promotion of communal violence*
 - (v) *Attacks on Australia's defence system; or*
 - (vi) *Acts of foreign interference;*
- Whether directed from, or committed within, Australia or not; and*
- (aa) *the protection of Australia's territorial and border integrity from serious threats; and*
- (b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

For a document (or part of a document) to be exempt under s 33(a)(i), I must be satisfied that, on the balance of probabilities, disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

¹ *Church of Scientology v Woodward* (1982) 154 CLR 25 at [19].

² See *Staats and National Archives of Australia* [2010] AATA 531 at [99].

I consider that the disclosure of the information contained within the documents that I have regarded as exempt under s 33(a)(i), could cause damage to the security of the Commonwealth, by compromising visa assessment functions. Disclosure of the information would reasonably be expected to increase the risk to Australian citizens from national security and criminal threats and other issues associated with visa processing.

I consider the particular damage to the security of the Commonwealth to be as follows:

- (a) Information within all of the documents would provide insight into the manner in which visa risk assessments are undertaken, including tactics, training, procedures and application of data analytics to categories of visa applicants and holders of visas.
- (b) Disclosure of the exempt information within all of the documents could reasonably be expected to allow circumvention of certain visa risk assessment activities and visa processing methods, which would increase instances of national security and criminal threats not being detected during visa processing.
- (c) Disclosure of the exempt information contained in the *Visa Risk Assessment (VRA) Sub programme weekly and monthly reports*, such as, VRA Programme issues, risks and certain visa category targeting information, would weaken the impact of the VRA Programme once implemented, compromising the security of Australia's border.
- (d) Information contained in the *Back pocket* Senate briefs and other government briefing documents would disclose specific visa risk, intelligence and visa compliance targeting information, which could reasonably be expected to cause harm to Australia's security by allowing potential illegal immigrants to avoid detection during visa processing.

As such I have decided that all of the documents in scope for your request are exempt from disclosure under section 33(a)(i) of the FOI Act.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

9 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 a 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:

By email to: foi.reviews@border.gov.au

OR

By mail to:

Freedom of Information Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

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 this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

10 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department 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

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.

11 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@border.gov.au.



Christine Grimm
Director, Visa Risk Assessment Implementation
Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au