



25 January 2018

Ms E Potaka

BY EMAIL: foi+request-4214-8735fa59@righttoknow.org.au

In reply please quote:

FOI Request: FA 17/11/00943

File Number: ADF2017/125823

Dear Ms Potaka

Freedom of Information (FOI) request - Access Decision

On 23 November 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).

On 20 December 2017 the Home Affairs Portfolio, including the Department of Home Affairs, was formally established. The Department of Home Affairs includes the entirety of the Department of Immigration and Border Protection, the Australian Border Force and the Office of Transport Security from within the Department of Infrastructure and Regional Development. It also includes specific functions from the Attorney-General's Department, the Department of Social Services and the Department of the Prime Minister and Cabinet.

As such a decision has now been made on your request by the Department of Home Affairs.

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:

Can you please provide information in relation to registered migration agent, Geoffrey Samuel Ward MARN: 0851489. I would like the following details about any complaints made about Mr Ward, to MARA or the DIBP, in the past 12 months:

- *The date of the complaint*
- *The nature of the complaint*
- *The outcome/response to the complaint*

I also seek a schedule of any documents captured by this request.

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 or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request;
- the information relevant to the request;
- the FOI Act;
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- responses from third parties consulted in accordance with the FOI Act;
- advice from Departmental officers with responsibility for matters relating to the to which you sought access;
- the Department's guidance material on the FOI Act.

4 Decision

My decision is to refuse access to your request.

5 Reasons for Decision

Section 26(2) of the FOI Act provides that I am not required to include in my decision any information that is of such a nature that its inclusion in a document of the Department would cause that document to be an exempt document.

I note that in the case of *Secretary Department of Health and Ageing v iNova Pharmaceuticals (Australia) Pty Limited [2010] FCA 1442 (21 December 2010)*, the Federal Court found that while section 13 of the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* imposes an obligation in certain circumstances to give reasons for a decision, it does not apply to a decision referred to in section 26 of the FOI Act.

You have sought access to personal information regarding a third party individual and specifically information relating to complaints against this person. It is my view that to identify whether any documents exist in the possession of the Department regarding your request would in itself provide you with personal information about that individual that is not in the public domain, and that such a disclosure would be an unreasonable disclosure of that individual's personal information.

Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person (including a deceased person). 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of any information, including the existence or otherwise of documents relevant to your request, would disclose personal information relating to a third party.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The existence of the information you are seeking access to regarding the third party is not well known and would only be known to a limited group of people with a business need to know within the Department. This information is not available from publicly accessible sources.

I am satisfied that the disclosure of any information regarding the existence or otherwise of any documents in the possession of the Department that might relate to your request would involve an unreasonable disclosure of personal information about an individual.

I have also turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

The public interest – section 11A of the FOI Act

I am required to consider whether access to the conditionally exempt information under section 47F of the FOI Act would be contrary to the public interest (section 11A of the FOI Act).

In the event that a document is conditionally exempt under section 47F, I must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt information would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- b) inform debate on a matter of public importance;
- c) promote effective oversight of public expenditure;
- d) allow a person to access his or her own personal information.

Having regard to the above:

- I am satisfied that access to the document would promote the objects of the FOI Act.
- I consider that the subject matter of your request may be of interest to a very limited section of the public.

- I consider that no insights into public expenditure will be provided through examination of the document.
- I am satisfied that you do not require access to the document in order to access your own personal information.

Disclosure of all aspects of the document would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information:

The Department is committed to complying with its obligations under the *Privacy Act 1988*. The disclosure of any information in relation to your request could reasonably be expected to prejudice the protection of the individual's right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- 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 those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of any personal information relevant to your request is not in the public interest.

6 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.

7 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@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
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>.

8 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 Home Affairs as the relevant agency.

9 Contacting the FOI Section

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



Debbie Bailey
Decision Maker
Department of Home Affairs