



17th December 2018

Mr Tim Singleton Norton

BY EMAIL: foi+request-4730-bd72df33@righttoknow.org.au

In reply please quote:

FOI Request: FA 18/08/00495

File Number: ADF2018/173762

Dear Mr Singleton Norton

Freedom of Information (FOI) request - Access Decision

On 7 August 2018, the Department of Home Affairs (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:

Documents directly relating to the source code of the Security Risk Assessment Tool (SRAT) in use within Australian immigration detention centres to assess the security risk of asylum seekers, criminals and visa oversteers in, as reported in media in August 2017.

On 10 September 2018, you advised that you are specifically requesting the source code of the [SRAT] algorithm software.

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

4 Documents in scope of request

The Department has undertaken reasonable searches in relation to the documents you have requested access to.

Having regard to your request and the types of documents that may fall within the scope of your request I am satisfied that the searches conducted were extremely thorough and all reasonable steps have been taken to locate any document relevant to your request.

5 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 does not exist, cannot be found or was not received from a contractor.

A 'document of an agency' is defined in section 4(1) of the FOI Act as:

- *a document in the agency's possession, whether created or received in the agency, or*
- *a document in relation to which an agency has taken contractual measures under s 6C in order to ensure that it receives the document from a contractor or sub-contractor providing services to the public on the agency's behalf.*

I am satisfied that the document was not in the agency's possession at the time your FOI request was received on 7 August 2018. The SRAT is the Intellectual Property of a Commonwealth contractor, Serco.

Section 6C of the FOI Act provides that a person may make a request to an agency for access to a document held by a contractor or subcontractor relating to the performance of a 'Commonwealth contract'. These documents are included in the definition of 'document of an agency' (s 4(1)) where the agency has taken contractual measures in accordance with s 6C.

In considering whether section 6C applies in this instance, the Department has consulted with the relevant Commonwealth contractor, Serco and have received the advice that the SRAT mechanism itself was developed by Serco for use across a number of contracts with several government agencies and private entities in multiple countries. It was *not* developed solely for the purpose of the delivery of services under the contract(s) between Serco and the Department.

On this basis, I am satisfied that the SRAT is not a 'document of an agency' under section 4(1), and that section 6C of the FOI Act does not apply in relation to your FOI request. As such I am refusing access to the documents requested by you based on the application of section 24A of the FOI Act.

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.



Derek Elias
Authorised Decision Maker
Department of Home Affairs

