



**Australian Government**  
**Department of Immigration and Border Protection**

28 February 2014

To Sophia Wrightman  
Right to Know  
Email: [foi+request-496-688782c0@righttoknow.org.au](mailto:foi+request-496-688782c0@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 14/02/00263  
File Number: ADF2014/4481

Dear Ms Wrightman

**Freedom of Information request – Decision on request - Access**

This letter refers to your request received on 29 January 2014 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

*For the purposes of the FOI Act I am seeking documentation that specifies who the primary title holder of Australian citizenship is.*

*Given the Minister is authorised to grant and revoke Australian citizenship, I am seeking records that establish whether or not the Commonwealth of Australia is primary title holder of Australian citizenship.*

**Decision**

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

My decision is to refuse access under section 24A of the FOI Act. A statement of reasons for my decision is below.

**FREEDOM OF INFORMATION ACT 1982 (FOI Act)**

**SECT 24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

**people** our business

*Document not received as required by contract*

- (2) *An agency may refuse a request for access to a document if:*
- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and*
  - (b) the agency has not received the document; and*
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.*

In your request you sought access to a document that would specify the primary title holder of Australian citizenship.

Section 24A(1) provides that an agency may refuse a request for access if all reasonable steps have been taken to find the document.

I have taken the following actions in an attempt to identify the documents you have requested:

- Contacted the Citizenship Policy Section in the Migration and Citizenship Policy Division

The business area has advised that they are unsure as to the nature of your question and that no documents exist that would fall within the scope of your request. In addition they did advise that the definition of who an Australian citizen is would be covered in section 4 of the citizenship Act. I have copied their advice for you below:

*Section 51(xx) of the Constitution provides Parliament of the Commonwealth of Australia with the power to make laws pertaining to naturalisation (and aliens) and as such the Australian Citizenship Act 2007 is Commonwealth law.*

*Who is an Australian citizen is defined in section 4 of the Act and provides:*

*Australian citizen*

*(1) For the purposes of this Act, Australian citizen means a person who:*

- (a) is an Australian citizen under Division 1 or 2 of Part 2; or*
- (b) satisfies both of the following:*
  - (i) the person was an Australian citizen under the Australian Citizenship Act 1948 immediately before the commencement day;*
  - (ii) the person has not ceased to be an Australian citizen under this Act.*

*Citizenship under the old Act*

*(2) If, under this Act, it is necessary to work out if a person was an Australian citizen at a time before the commencement day, work that out under the Australian Citizenship Act 1948 as in force at that time.*

I am satisfied the department has taken all reasonable steps to find the documents, as no documents exist I am refusing your request for access.

## **Review rights**

### **Internal review**

If you disagree with my decision, you have the right to apply for an internal review by the department of a primary decision to refuse access to documents you have requested.

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 and the department must make a review decision within 30 days.

Applications for review should be sent to:

Post                      Freedom of Information  
                                 Department of Immigration and Border Protection  
                                 PO Box 25  
                                 BELCONNEN ACT 2616

Email                      [foi@immi.gov.au](mailto:foi@immi.gov.au)

### **Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online                    <https://forms.business.gov.au/aba/oaic/foi-review/>  
Email                      [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Post                        GPO Box 2999, Canberra ACT 2601  
In person                Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at [www.oaic.gov.au](http://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.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. More information is available online at [www.oaic.gov.au](http://www.oaic.gov.au).

If you are unhappy with the department's decision on your access request you should ask for the decision to be reviewed. This is a separate process and you should follow the advice outlined above to lodge a valid Information Commissioner review request.

### **Client service information**

Information about our Client Service Charter and how to make a compliment, complaint or suggestion, is included in the attached 'Client Service Information'.

**Contacting the department**

You can contact us with a general enquiry in a number of ways including; by email through our website; by telephone through our service centres or offices around the world; or in person.

In Australia you can call 13 18 81 between 8.30 am and 4.30 pm Monday to Friday. Details on contacting our offices outside Australia are available on our website at [www.immi.gov.au](http://www.immi.gov.au).

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

Yours sincerely



Janelle Raineri  
Position number: 60008295  
Authorised FOI Decision Maker  
FOI and Privacy Policy Section  
Department of Immigration and Border Protection

Email            [foi@immi.gov.au](mailto:foi@immi.gov.au)

**Attachment**

Client Service Information



**Australian Government**  
**Department of Immigration and Border Protection**

**CLIENT SERVICE INFORMATION**

**Client Service Charter**

Our Client Service Charter explains our service commitment to you. We are committed to service delivery that is timely, open and accountable, and responsive to your needs. The Charter explains how you can help us and how you can provide feedback or make a complaint. You can read our Client Service Charter on our website, or in a printed copy available from any of our offices.

**Service satisfaction**

The department remains committed to ensuring that all clients, both in Australia and overseas, receive not only fair and reasonable treatment, but also an efficient standard of service that is sensitive to each client's needs.

To provide a compliment, complaint or suggestion you can:

- telephone the Global Feedback Unit on 13 31 77 during business hours
- complete a feedback form online at [www.immi.gov.au](http://www.immi.gov.au)
- write to:  
The Manager  
Global Feedback Unit  
GPO Box 241  
Melbourne VIC 3001  
Australia
- contact us directly through any of our offices.