



Australian Government
Department of Immigration and Border Protection

FOI Request FA 14/03/00162-R1
File Number ADF2014/7598

11 April 2014

Mr Ben Fairless
By email: foi+request-547-ea29d2ff@righttoknow.org.au

Dear Mr Fairless

Freedom of Information request – decision internal review

This letter refers to your request under s.54 of the *Freedom of Information Act 1982* (the Act) for internal review of a decision on 28 March 2014 by Ms Shannon Bevan (our reference: FA 14/03/00162).

The Department of Immigration and Border Protection (the Department) received your internal review request on Friday 28 March 2014. Under the Act, the latest date the agency may provide you with a decision is Sunday 27 April 2014. However, as this is a non-working day, s.36(2) of the Acts Interpretation Act 1901 allows me to provide you with the decision on the next working day, which is **Monday 28 April 2014**.

Background to your original request

In your original request you sought access under the Act to the following documents:

'I request a copy of all emails, policies, procedures or other documents created by the Department which relate to the Department's use of s15(2)(c) of the FOI Act.

Furthermore I request a copy of all emails, policies, procedures or other documents created by the Department which relate to the Department's handling of complaints that come from the RightToKnow website (<<http://www.righttoknow.org.au/>>)

I wish to exclude clarification requests that were sent from the Department to FOI clients referencing s.15(2)(c). I do not exclude communication with FOI clients where, for example, there is discussion around the use of s.15(2)(c) or where a FOI client has made a complaint to the Department on the use of s.15(2)(c).

people our business

On 26 March 2014, you further advised Ms Bevan:

I am happy to exclude email addresses and telephone numbers from my request. I am also happy to exclude names of members of the public. I do not wish to exclude names of current or former employees or contractors of the Department.

The Department's response to your FOI request

On 28 March 2014, Ms Bevan emailed her decision to you, releasing 3 documents in full. Ms Bevan had deleted 'irrelevant' material (such as names of members of the public) from 2 documents (under s.22(1)(a)(ii) of the Act). I note that, where documents are released and the only material deleted from the documents has been deleted under s.22(1)(a)(ii), the release is considered to be release 'in full' under the Act.

Your request for review

On 28 March 2014 you advised the Department:

I am writing to request an internal review of Department of Immigration and Border Protection's handling of my FOI request 'Internal Correspondence related to the use of s15(2)(c) of the FOI Act'. The review is requested for the following reasons:

s15(2)(c) has been used in such away that it could reasonably considered "standard practice" for requests from Right to Know. It would therefore be unreasonable to assume that no internal discussion or dialogue has taken place.

A reasonable person would therefore assume that some dialogue has taken place to form this position. This could include, but is not limited to, verbal meetings where minutes of the meeting were kept (as an example)?

On Friday 4 April 2014, I advised you that I had been appointed as the internal review officer and that I considered your request to be a valid request for internal review. I also advised you that I have taken your request to be a request for internal review of the way that the scope of the request was interpreted or the searches were undertaken for relevant documents.

This letter is to inform you that I have finalised the internal review. You will find my decision and the reasons for the decision in the attached Decision Record and Schedule of Documents. Read together, these form my written reasons for decision as required under s.26(1) of the Act.

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at www.oaic.gov.au.

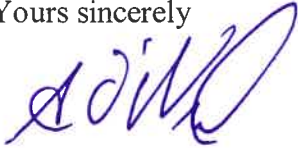
How to make a complaint about the handling of this FOI request

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.

Contacting the FOI Section

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

Yours sincerely



Angela O'Neil
Authorised decision maker
FOI & Privacy Policy Section
Department of Immigration & Border Protection

Telephone 02 6264 1382
Email foi@immi.gov.au

Attachments

- A - Decision Record
- B - Schedule of Documents
- C - Extract of relevant legislation
- D - Released documents: 5 documents comprised of 12 pages



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Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Details

FOI Request FA 14/03/00162-R1
File Number ADF2014/7598

Request

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I wish to exclude clarification requests that were sent from the Department to FOI clients referencing s.15(2)(c). I do not exclude communication with FOI clients where, for example, there is discussion around the use of s.15(2)(c) or where a FOI client has made a complaint to the Department on the use of s.15(2)(c).

I am happy to exclude email addresses and telephone numbers from my request. I am also happy to exclude names of members of the public. I do not wish to exclude names of current or former employees or contractors of the Department.

Documents in scope

1. I have located 2 additional documents that are in scope.
2. As the Department previously identified 3 documents as being in scope, with these additional documents, I am satisfied that the Department holds 5 documents in scope. I have listed them in the Schedule of Documents attached to this decision.

Decision and reasons for decision

3. I am authorised under s.23 of the *Freedom of Information Act 1982* (the Act) to make a decision on your FOI request for internal review of the decision notified to you by Ms Bevan on 28 March 2014.
4. My role under the Act is to make a fresh decision (s.54C(3) of the Act), taking into account the relevant documents and information.

Attachment A continued**DECISION RECORD**

5. In reaching my decision, I have considered the following:
- documents held by the Department;
 - where relevant, your views and advice;
 - the Act;
 - FOI Guidelines published by the Office of the Australian Information Commissioner; and
 - advice from the relevant business areas within the Department.
6. The documents in scope of the request include information that I am satisfied is irrelevant to the scope of the request. This information is comprised of the names of members of the public who submitted requests under the Act to the Department and information that is not relevant to the process of testing 'validity' of requests under s.15(2)(c) of the Act. Therefore, I have deleted this out of scope information as 'irrelevant material' as defined in s.22(1)(a)(ii) of the Act.



Angela O'Neil
Authorised decision maker
FOI & Privacy Policy Section
Department of Immigration & Border Protection

11 April 2014



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Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/03/00162-R1
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Doc No	Pages	Date	Description	Decision
1	1	14/08/2013	Internal email regarding use of s.15(2) of the Act – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
2	2-4	14/08/2013	Email response to third party applicant re FA 13/08/00260 – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
3	5-6	14/08/2013	Email to third party applicant re FA 13/08/00254 – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
4	7-8	15/08/2013	Internal email regarding use of s.15(2) of the Act – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
5	9-12	27/02/2014	Email response to applicant re FA 14/02/01093	Release in full

Attachment C

Extract of relevant legislation

Freedom of Information Act 1982

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

54 Internal review—access refusal decision

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the *internal review*) of the access refusal decision.

54B Internal review—application for review

- (1) An application for internal review must be in writing and must be made:
 - (a) within 30 days, or such further period as the agency allows, after the day the decision is notified to the applicant for internal review (the *internal review applicant*); or
 - (b) in the case of an access refusal decision of a kind mentioned in paragraph 53A(b), (c) or (f), within whichever of the following is the longer period:
 - (i) 30 days, or such further period as the agency allows, after the day the decision is notified to the internal review applicant;
 - (ii) 15 days after the day the access referred to in that paragraph was given (or purported to be given).

...

54C Internal review—decision on internal review

Scope

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the *original decision*) is made in accordance with this Part.

Decision

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

Notice of decision

- (4) Section 26 extends to a decision made under this section