



11 August 2020

Sumsi Timonda

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In reply please quote:

FOI Request: FA 20/05/00980

File Number: OBJ2020/17353

Dear Sumsi Timonda

Freedom of Information (FOI) request - Access Decision

On 25 May 2020, 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:

In 2019:

- 1) How many anonymous fingerprints were shared with each of the four FCC/Migration5 countries?*
- 2) How many cases returned a positive match?*
- 3) For how many cases was further information requested?*
- 4) How many requests were received by the Australian authorities from each of the four FCC countries?*
- 5) What is the maximum number of fingerprints that may be shared with each FCC member per annum?*

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 documents 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)

4 Documents in scope of request

The Department has used its computer system to produce one document that contains information that falls within the scope of your request in accordance with section 17 of the FOI Act.

The Department has also identified one existing discrete document which contains more detailed information relevant to parts 1 and 4 of your request, being a breakdown of data pertaining to 'each of the four FCC/Migration 5 countries'.

The information relevant to your request existed in the possession of the Department on 25 May 2020 when your FOI request was received.

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:

- Release one document in full
- Exempt relevant information in one document in full

6 Reasons for Decision

Detailed reasons for my decision are set out below.

6.1 Section 22 of the FOI Act – irrelevant to request

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

I have decided that part of document 2 would disclose information that could reasonably be regarded as irrelevant to your request pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as relevant to your request.

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

Section 33(b) provides that a document is an exempt document if disclosure would divulge information or matter communicated in confidence by a foreign government, an authority of a foreign government or an international organization to the Commonwealth.

The Information Commissioner Guidelines state that information is communicated in confidence by or on behalf of another government if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Where the information is, in fact confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations.

The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access to that communication.

An agreement to treat documents as confidential does not need to be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communications.

Having considered these factors, I am satisfied that the information contained within document 2 was communicated in confidence by or on behalf of another government, and was received by the Australian Government under an understanding of confidentiality. There was clear general understanding between the relevant parties that the communication would be treated in confidence.

As such, I have decided that the release of the parts of the document 2 which are relevant to your part 1 and 4 of your request would divulge information communicated in confidence by or on behalf of a foreign government to the Commonwealth of Australia and I have decided that the relevant parts of the document are exempt from disclosure under section 33(b) of the FOI Act.

Section 33(a)(iii) 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 international relations of the Commonwealth.

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.

I consider that the release of the information in document 2 which is relevant to parts 1 and 4 of your request would, or could reasonably be expected to cause damage to the Australian Government's international relations.

As outlined above, the information contained in this document was communicated to the Australia government on confidence. I am of the view that the disclosure of this information

could reasonably be expected cause damage to the Australian Government's international relations with a foreign government as the disclosure would divulge information or matter communicated in confidence by a foreign government or an authority of a foreign government.

As such I have decided that the relevant information is exempt from disclosure under section 33(a)(iii) of the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

9 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.

10 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.



Simon Aitchison
Authorised Decision Maker
Department of Home affairs