

E-mail Message

From: [Ben Fairless \[SMTP:foi+request-529-93665f99@righttoknow.org.au\]](mailto:Ben.Fairless@righttoknow.org.au)
To: [FOI \[SMTP:foi@xxx\]](mailto:FOI@xxx)
Cc:
Sent: 22/02/2014 at 4:34 AM
Received: 22/02/2014 at 4:34 AM
Subject: Freedom of Information request - Directions from Ministers in relation to FOI requests

Dear Department of Immigration and Border Protection,

I request, under the Freedom of Information Act, documents (including, but not limited to, emails, letters or other notes to which the department has access) which reference requests, decisions or opinions by either the minister currently responsible for the Department or any other currently serving federal minister on how the department should handle Freedom of Information (FOI) requests.

I also request that the charges associated with this request be waived on public interest grounds, due to the importance of FOI (and requests, decisions or opinions by Ministers in relation to how the department manages FOI requests) has in keeping the Government to account.

Yours faithfully,

Ben Fairless

Please use this email address for all replies to this request:
foi+request-529-93665xxx@xxxxxxxxxxxxx.xxx.xx

Is xxx@xxxx.xxx.xx the wrong address for Freedom of Information requests to Department of Immigration and Border Protection? If so, please contact us using this form:

<https://www.righttoknow.org.au/help/contact>

Write your response as plain text. Only send PDF documents as a last resort. Government guidelines make it clear that PDF is not an acceptable format for you to use in the delivery of government information.
<https://www.righttoknow.org.au/help/officers#pdf>

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If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

Released by DIBP under the
Freedom of Information Act 1982



Our reference: CP14/00757

Your reference:

Ms Linda Rossiter
Director, FOI & Privacy Policy Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Sent by email linda.rossiter@immi.gov.au

Dear Ms Rossiter

Freedom of Information Complaint – Notice of investigation results

I refer to a complaint by Mr Ben Fairless about the Department of Immigration and Border Protection under the *Freedom of Information Act 1982* (the FOI Act). I am writing in accordance with s 86(2) to inform you that I have completed my investigation into this complaint and to advise you of the outcome.

Background

On 22 February 2014, Mr Fairless made an FOI request to the Department via the Right to Know website (www.righttoknow.org). This request was received by the Department in the form of an email from the address foi+request-529-93665f99@righttoknow.org.au. It contained the following sentence:

‘Please use this email address for all replies to this request:
foi+request-529-93665f99@righttoknow.org.au’.

On 27 February 2014, Mr Fairless received a response from the Department referring to s 15 of the FOI Act which relevantly requires that an FOI request ‘give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).’ The Department’s response stated:

Issues regarding your request

I am not satisfied that the email address you have provided meets the requirement of ‘details of how notices under this Act may be sent to the applicant’ (s 15(2)(b) of the Act). In particular, it does not appear to be an address to which the agency could send a ‘notice’. The address you have provided appears to be an address for publication of correspondence on the internet.

Released by DIBP under the
Freedom of Information Act 1982

Next steps

Please confirm by writing to foi@immi.gov.au that the email address you have provided is an address to which the Department can send you notices, by close of business Thursday 6 March 2014. The request will then be validated.

Mr Fairless responded on the same day, confirming that his address for notice was foi+request-529-93665f99@righttoknow.org.au.

On 8 March 2014, the complainant made a complaint about the Department to the Office of the Australian Information Commissioner (OAIC). He stated that:

I believe the actions by DIBP are an attempt to stifle FOI requests made via the RTK Website, contrary to the objects of the FOI Act and the FOI Guidelines. I respectfully request that the OAIC investigate the allegations contained herein and any available powers at its disposal to direct the DIBP to cease using s 15(2)(c) of the FOI Act to stifle requests made via the RTK Website.

On 13 March 2014, the Department confirmed with the Office of the Australian Information Commissioner (OAIC) that it considered its obligation to process Mr Fairless' request under s 15 of the FOI Act to have been enlivened (and the 30 day processing period to have commenced) on the day when Mr Fairless confirmed his address for notice, on 27 February 2014.

On 17 April 2014, the Department provided further explanation of its 'validation' approach. It explained that there had been a number of instances where requests through the RTK website were submitted using a 'set and forget' approach by the applicant, where the applicant did not respond when they were contacted by the Department. The Department submitted that:

Given that RTK freely acknowledges the use of crowd sourcing to raise FOI requests, it is reasonable for the department to validate the email addresses used by applicants. At no point have we demanded an alternative email address be used. This is clear from the correspondence on the RTK website, to which Mr Fairless has kindly provided reference in his email to you. This ensures that the administrative burden on the department is justified and not wasted on requests raised by individuals who have no intention of responding. This has been used to manage the significant workload of the department in relation to FOI and is a valid use of s 15(2)(c), particularly in relation to previous experience with email accounts from this website (RTK).

The Department further submitted that it does not intend to change its practices in response to the complaint by Mr Fairless, and that 'it is important that any agency manages its limited resources in relation to FOI and ensures that the administrative burden placed on the department by RTK is managed effectively'. The Department submitted that it does not refuse a valid request or refuse to process a request until an alternative email is provided. It submitted that the Department merely seeks confirmation of the applicant's intention to use the RTK email, in light of the

numerous requests submitted from RTK that have not been validated due to a lack of response.

Issue

The central issue in this complaint is the question of whether Mr Fairless's FOI request of 22 February 2014 was valid, on that date. This involves consideration of the terms of s 15 of the FOI Act.

Finding

I find that the email from the applicant, sent via the Right to Know website, met the requirements of a valid FOI request. In relation to the requirement for an address for notice in s 15(2)(c), the request provided an email address for replies. Section 15(2)(c) explicitly refers to the possibility that the applicant's address for notice might include an 'electronic address to which notices may be sent by electronic communication'.

The request was received by the Department on 22 February 2014, but was 'validated' by the Department on 27 February 2014. Therefore, by treating the initial request as invalid, the Department's decision had the effect of purporting to add 5 days to the processing period provided in s 15(5)(b).

I find that the applicant's request was valid on 22 February 2014 and the processing time should have commenced on that date. The Department therefore did not fulfil its obligations to meet the relevant statutory timeframes under s 15(5) of the FOI Act.

For the reasons above, I find that the Department's application of s 15(2)(c) was incorrect.

Outcomes

I would like to draw the Department's attention to [8.71]–[8.74] and [3.28]–[3.33] of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act. These paragraphs of the Guidelines relate to the timeframes for dealing with a request, and the requirements of an FOI request. I particularly note that agencies are encouraged to develop procedures, and regularly review their existing procedures, to ensure that these are flexible and facilitate rather than hinder access.

I acknowledge the Department's objective has been to reduce the administrative burden of those FOI requests that are made via the RTK website and then forgotten. However, the approach the Department has adopted to meet this objective is not supported by the FOI Act. It also has the unfortunate consequence of purporting to extend the processing period for applicants who do respond to the Department's request for 'validation'. From perusing requests on the RTK website that have been

put through the Department's validation process, the period that it takes a request to be validated is typically around a week.

I recommend that the Department:

- review its process for 'validating' FOI requests to ensure that it is consistent with the FOI Act;
- accept email addresses (including RTK email addresses) as valid addresses for notice, as required by s 15(2)(c) of the FOI Act;
- start counting the processing period for FOI requests from the date on which the request is received, as required by s 15(5) of the FOI Act, rather than the day on which the request is 'validated'.

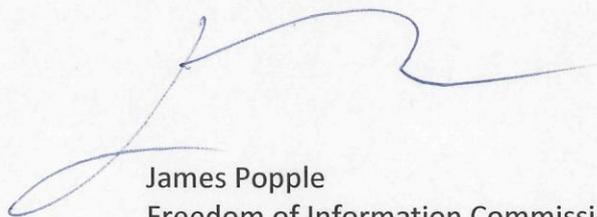
Next Step

I invite the Department to provide a response in relation to these findings and recommendations. If you wish to provide a response please provide this by **30 June 2014**. If you choose not to provide any response I will finalise this complaint. Should this complaint be finalised, the OAIC will ask the Department to report on what steps it has taken to implement my recommendations.

Mr Fairless has been provided with a copy of this letter.

Please contact Tina Jelenic on (02) 9284 9855 or by email at tina.jelenic@oaic.gov.au if you would like to discuss this matter. Please quote the reference number CP14/00757.

Yours sincerely



James Popple
Freedom of Information Commissioner

16 June 2014



Our reference: CP14/00757

Your reference:

Ms Linda Rossiter
Director, FOI & Privacy Policy
Department Of Immigration And Border Protection
By email: foi@immi.gov.au

Dear Ms Rossiter

Freedom of Information complaint by Mr Ben Fairless

The Information Commissioner has received a complaint under section 70 of the *Freedom of Information Act 1982 (Cth)* (the Act) from Mr Ben Fairless.

On 13 March 2014, the OAIC conducted preliminary inquiries with the Department in relation to this matter. The Department responded on the same day. Thank you for providing this prompt response.

I am writing to advise that we have decided to conduct an investigation into this matter under section 69 of the Act. Following the Department's response to this letter, I expect the Information Commissioner will make a decision under s 86 setting out his findings in this matter.

At this point, I would recommend that the Information Commissioner's finding be that the FOI request was valid at the date that it was made, and that the FOI processing clock should have started running on that date.

I would appreciate receiving any final submissions the Department would like to make before this matter is finalised. Please provide a response by **1 May 2014**.

The complaint

A copy of Mr Fairless's complaint is attached to this email. His central concern is the following:

I believe the actions by DIBP are an attempt to stifle FOI requests made via the RTK Website, contrary to the objects of the FOI Act and the FOI Guidelines. I respectfully request that the OAIC investigate the allegations contained herein and any available powers at its disposal to direct the DIBP to cease using s 15(2)(c) of the FOI Act to stifle requests made via the RTK Website.

Background

Mr Fairless made an FOI request to the Department via the Right to Know website (www.righttoknow.org) on 22 February 2014. This request was received by the Department in the form of an email from the address foi+request-529-93665f99@righttoknow.org.au. It contained the following sentence:

Please use this email address for all replies to this request:
foi+request-529-93665f99@righttoknow.org.au

On 27 February 2014, Mr Fairless received a response from the Department referring to s 15 of the FOI Act which relevantly requires that an FOI request 'give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).' The Department's response further stated:

Issues regarding your request

I am not satisfied that the email address you have provided meets the requirement of 'details of how notices under this Act may be sent to the applicant' (s.15(2)(b) of the Act). In particular, it does not appear to be an address to which the agency could send a 'notice'. The address you have provided appears to be an address for publication of correspondence on the internet.

Next steps

Please confirm by writing to foi@immi.gov.au that the email address you have provided is an address to which the Department can send you notices, by close of business Thursday 6 March 2014. The request will then be validated.

Mr Fairless responded on the same day, confirming that his address for notice was foi+request-529-93665f99@righttoknow.org.au.

The Department advises that it considers its obligation to process Mr Fairless' request under s 15 of the FOI Act to have been enlivened when Mr Fairless confirmed his address for notice on 27 February 2014.

Issues under investigation

The central issue in this complaint is the question of whether Mr Fairless's purported FOI request of 22 February 2014 was valid, on that date. This will involve consideration of the terms of s 15 of the FOI Act.

On the basis of the information presently before the OAIC, as described in the above chronology, it appears that Mr Fairless's FOI request was valid on the date it was received by the Department.

The email appears to meet the requirements of a valid FOI request set out in s 15 of the FOI Act. In relation to the requirement for an address for notice, the request provides an email address for all replies to the request. Section 15(2)(c) explicitly refers to the possibility that the applicant's address for notice might include an 'electronic address to which notices may be sent by electronic communication'.

The request was received by the Department on 22 February 2014, and only 'validated' by the Department on 27 February 2014. It appears that by treating the initial request as invalid the Department has effectively added 5 days to the standard processing time provided in s 15(5)(b).

Information sought by the OAIC

If the Department elects not to provide further submissions, I would recommend that the Information Commissioner issue investigation findings under s 86 of the FOI Act to the above effect.

If the Department does wish to make further submissions to address any of the points in this letter or any related issues, please provide these to me by **1 May 2014**.

If the Department does make further submissions, it would be appreciated if you would consider the following questions:

- Was it standard practice for the Department to request an alternative email address from applicants who make requests via the Right to Know website? Is this still the Department's standard practice?
- Has the Department taken any steps to change its processes following Mr Fairless's complaint?

Contact details

If you have any questions about this letter, please contact me on (02) 6239 9109 or by email at annan.boag@oaic.gov.au. In written correspondence, please refer to reference number CP14/00757.

Yours sincerely,

Annan Boag
Assistant Director, FOI Dispute Resolution
Office of the Australian Information Commissioner

16 April 2014

From: [Annan Boag](#)
To: [FOI](#)
Subject: RE: Complaint from Ben Fairless re s 15(2)(c) FOI Act - CP14/00757; FA14/02/01093 [SEC=UNCLASSIFIED]
Date: Thursday, 17 April 2014 5:59:17 PM

Hi Steve,

Thanks for clearing that up. We will certainly take your comments under consideration.

My impression that a different address was sought was created by the Department's email outlining the s 15(2)(c) issue.

That email states that for an FOI request to be valid it must provide an address to which the Department can send a notice. It also states that the RTK address is not an address to which the Department can send a notice:

I am not satisfied that the email address you have provided meets the requirement of 'details of how notices under this Act may be sent to the applicant' (s 15(2)(b) of the Act). In particular, it does not appear to be an address to which the agency could send a 'notice'. The address you have provided appears to be an address for publication of correspondence on the internet.

This suggested to me that the Department felt that a different address should have been used. Mr Fairless has referred us to a matter where the RTK applicant did in fact provide a different address in response to a similar email.

However, I acknowledge that the email from DIBP does not ask for an alternative email address.

The email asks the FOI applicant to confirm that the email address they have provided for replies is an address to which the Department can send notices.

If no confirmation is received, the request is regarded as invalid on the basis that the request does not meet the requirements of s 15(2)(c).

If confirmation is received, the request is "validated".

The s 15(5)(b) processing period is taken to run from when validation occurs.

From browsing RTK, this seems typically to be about a week after a purported FOI request is initially received.

Please feel free to provide further clarification if I have misunderstood the way this works.

Hope you have a great Easter weekend.

Regards

Annan Boag | Assistant Director | Dispute Resolution Branch

Office of the Australian Information Commissioner

175 Pitt Street SYDNEY NSW

GPO Box 5218 SYDNEY NSW 2001

+61 2 8231 4266 | xxxxx.xxxx@xxxx.xxx.xx

From: Steven HOCKING [mailto:xxxxxx.xxxxxxx@xxxx.xxx.xx] **On Behalf Of** FOI
Sent: Thursday, 17 April 2014 11:24 AM
To: Annan Boag
Cc: Paul Hansen; FOI
Subject: RE: Complaint from Ben Fairless re s 15(2)(c) FOI Act - CP14/00757; FA14/02/01093 [SEC=UNCLASSIFIED]

UNCLASSIFIED

DIBP reference: FA14/02/01093; ADF2014/6570

OAIC reference: CP14/00757

Hello Annan,

Regarding the complaint from Mr Fairless, I have addressed your concerns below:

- Was it standard practice for the Department to request an alternative email address from applicants who make requests via the Right to Know website? Is this still the Department's standard practice?

Can you please provide reference to where the department has requested an alternative email address? There was no such reference in the links provided by Mr Fairless.

As you would be aware from the broader issue with RTK and the requests surrounding detention logs, there have been a number of instances where requests have been submitted using a 'set and forget' approach by the applicant. This means that when they were contacted using the email provided, they did not respond. Examples of these requests are on the RTK website. Given that RTK freely acknowledges the use of crowd sourcing to raise FOI requests, it is reasonable for the department to validate the email addresses used by applicants. At no point have we demanded an alternative email address be used. This is clear from the correspondence on the RTK website, to which Mr Fairless has kindly provided reference in his email to you. This ensures that the administrative burden on the department is justified and not wasted on requests raised by individuals who have no intention of responding. This has been used to manage the significant workload of the department in relation to FOI and is a valid use of s.15(2)(c), particularly in relation to previous experience with email accounts from this website (RTK).

All of the above information is clearly articulated in the notices provided to applicants from RTK and viewable on their website.

- Has the Department taken any steps to change its processes following Mr Fairless's complaint?

The department does not intend to change its process in response to the complaint by Mr Fairless. It is important that any agency manages its limited resources in relation to FOI and ensures that the administrative burden placed on the department by RTK is managed effectively. At no point have we refused a valid request or refused to process a request until an alternative email is provided. We are merely seeking confirmation of the applicant's intention to use the RTK email, in light of the numerous requests submitted from RTK that have not been validated due to a lack of response. All of this information is, conveniently, freely available on the RTK website.

Please contact me if you wish to discuss.

Regards

Steven Hocking
Assistant Director
Department of Immigration and Border Protection
Telephone: (02) 6264 1007

Email: xxxxxx.xxxxxxx@xxxx.xxx.xx

UNCLASSIFIED

From: Annan Boag [<mailto:xxxxx.xxxx@xxxx.xxx.xx>]
Sent: Wednesday, 16 April 2014 3:50 PM
To: FOI
Cc: Paul Hansen
Subject: Complaint from Ben Fairless re s 15(2)(c) FOI Act - CP14/00757; FA14/02/01093
[SEC=UNCLASSIFIED]

Good afternoon,

Please find attached, a notice under s 75 of the FOI Act advising that the OAIC is investigating a complaint from Ben Fairless about the Department's reliance on s 15(2)(c) of the FOI Act in relation to his request, made via www.righttoknow.org – refs CP14/00757; FA14/02/01093.

Happy to discuss.

Regards,

Annan Boag | Assistant Director | Dispute Resolution Branch

Office of the Australian Information Commissioner

175 Pitt Street SYDNEY NSW
GPO Box 5218 SYDNEY NSW 2001

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Freedom of Information Act 1982

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From: [Ashley SMITH](#) on behalf of [FOI](#)
To: [Annan Boag](#)
Subject: RE: Notice of complaint by Ben Fairless - FA14/02/01093 [SEC=UNCLASSIFIED]
Date: Thursday, 13 March 2014 1:59:00 PM
Attachments: [Freedom of Information request - Directions from Ministers in relation t...vmbx](#)

UNCLASSIFIED

Good afternoon Annan,

1. Please provide a copy of the applicant's email (sent via Right to Know) and dated 22 February 2014, in the form that it was received by DIBP.
Attached.
2. On what date does DIBP consider that its obligation to process this request under s 15 of the FOI Act was enlivened? (e.g., the email of 22 February 2014 or the email of 27 February 2014)
27 February 2014
3. What email address is the Department now using as its address for notice for Mr Fairless, in relation to this FOI request?
xxxxxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxx.xxx.xx

Thank you.

Ashley Smith

FOI & Privacy Policy Section
Department of Immigration and Border Protection
Telephone: (02) 6225 8037

UNCLASSIFIED

From: Annan Boag [mailto:xxxxx.xxx@xxxx.xxx.xx]
Sent: Thursday, 13 March 2014 1:35 PM
To: FOI
Subject: RE: Notice of complaint by Ben Fairless - FA14/02/01093 [SEC=UNCLASSIFIED]

Good afternoon Ashley,

Thank you for advising that this FOI request is underway.

In the interim, would the Department please provide the following information and documents. This will inform the OAIC's decision about whether or not to conduct an investigation of this complaint. I would appreciate a response by **27 March 2014**.

1. Please provide a copy of the applicant's email (sent via Right to Know) and dated 22 February 2014, in the form that it was received by DIBP.

2. On what date does DIBP consider that its obligation to process this request under s 15 of the FOI Act was enlivened? (e.g., the email of 22 February 2014 or the email of 27 February 2014)
3. What email address is the Department now using as its address for notice for Mr Fairless, in relation to this FOI request?

Kind regards,

Annan Boag | Assistant Director | Dispute Resolution Branch

Office of the Australian Information Commissioner

175 Pitt Street SYDNEY NSW

GPO Box 5218 SYDNEY NSW 2001

+61 2 8231 4266 | xxxxx.xxxx@xxxx.xxx.xx

From: Ashley SMITH [<mailto:xxxxxx.xxxx@xxxx.xxx.xx>] **On Behalf Of** FOI

Sent: Thursday, 13 March 2014 9:26 AM

To: Elizabeth Zatschler

Subject: RE: Notice of complaint by Ben Fairless - FA14/02/01093 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good morning Elizabeth,

The applicant confirmed his email address is one in which he will respond to the notices sent to him, thus we're currently processing his FOI request which is due 29 March 2014.

Thanks.

Ashley Smith

FOI & Privacy Policy Section

Department of Immigration and Border Protection

Telephone: (02) 6225 8037

UNCLASSIFIED

From: Elizabeth Zatschler [<mailto:xxxxxxxxxx.xxxxxxxxxx@xxxx.xxx.xx>]

Sent: Wednesday, 12 March 2014 8:32 AM

To: FOI

Subject: Notice of complaint by Ben Fairless [SEC=UNCLASSIFIED]

Our reference: CP14/00757

Released by DIBP under the
Freedom of Information Act 1982

Ms Linda Rossiter
Department Of Immigration And Border Protection
PO Box 25
BELCONNEN ACT 2617

Dear Ms Rossiter

Notice of complaint by Ben Fairless

I am writing to notify you that Mr Ben Fairless has lodged a complaint about the manner in which the Department Of Immigration And Border Protection has handled his FOI request.

The Office of the Australian Information Commissioner is currently considering the complaint; however, due to a high volume of complaint and review applications we are experiencing a delay in allocating matters.

I enclose a copy of Mr Fairless's complaint.

The OAIC encourages parties to a complaint to resolve their dispute informally, and we would encourage you to consider possible compromises or alternative solutions to the dispute in this matter.

If the department is currently dealing with this complaint or a subsequent FOI decision has been made could you please contact us to discuss this.

If you would like to speak to someone about this matter please call our Enquiries Line on 1300 363 992. Our preference is to receive correspondence by email; however, mail can be sent to our Sydney office at GPO Box 5218 Sydney NSW 2001. Please quote the reference number CP14/00757.

Yours sincerely

Elizabeth Zatschler | Investigations Officer

Office of the Australian Information Commissioner

4 National Circuit, BARTON ACT 2600

GPO Box 2999 CANBERRA ACT 2601 | www.oaic.gov.au

Phone: +61 2 6239 9121

Fax: +61 2 6239 9187

Email: xxxxxxxxx.xxxxxxxxxx@xxx.xxx.xx

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policy can be viewed on the department's website at www.immi.gov.au. See:
<http://www.immi.gov.au/functional/privacy.htm>

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