



7 October 2020

Ms. Regina Jefferies  
**BY EMAIL: [foi+request-6508-adbabe64@righttoknow.org.au](mailto:foi+request-6508-adbabe64@righttoknow.org.au)**

**In reply please quote:**

FOI Request: FA 20/07/01368-R1  
File Number: OBJ2020/25259

Dear Ms. Jefferies

**Decision on Internal Review – Freedom of Information Act 1982**

I refer to your correspondence dated 8 September 2020 in which you requested that the Department of Home Affairs (the Department) review its decision on access to documents dated 31 August 2020 under the *Freedom of Information Act 1982* (the FOI Act).

**1 Scope of original request**

The scope of your original request for access to documents under the FOI Act was as follows:

*I respectfully request under Freedom of Information:  
Any historical Procedural Instructions, Policy Guidelines, Standard Operating Procedures, or similar document related to screening protection claims made at Australian airports, issued prior to 13 March 2013.*

**2 Original Decision on access dated 31 August 2020**

The Department identified one document as falling within the scope of your original request. This document was in the possession of Department on 22 July 2020 when your FOI request was received.

The original decision maker decided that:

- the documents that would fall within the scope of the request consists of reference material that is publicly available;
- and that as a consequence, the FOI Act does not apply to these documents by the operation of section 4(d) of the FOI Act.

**3 Request for Internal Review**

On 8 September 2020, you requested the Department to review its decision dated 31 August 2020. The terms of your review request were as follows:

*I am writing to request an internal review of Department of Home Affairs's handling of my FOI request 'Historical instructions - Entry Screening'.*

*I requested 'Any historical Procedural Instructions, Policy Guidelines, Standard Operating Procedures, or similar document related to screening protection claims made at Australian airports, issued prior to 13 March 2013.' In a response dated 31 August 2020, the Department apparently identified one document as falling within the scope of the request, but decided [sic] to exempt the document in full from disclosure because the officer found that the documents 'form part of the Procedures Advice Manual (PAM) titled "Detention Screening".'*

*However, a full search of the Procedures Advice Manual (PAM) in LEGENDcom does not reveal any section entitled 'Detention Screening'. The FOI official's reference to this so-called section does not include any number or chapter reference and it is unclear to which documents the official refers. There is a section of the PAM entitled 'Border screening detention' although it is unclear that this is the section to which the official refers. Furthermore, the 'Border screening detention' section also refers to prior policies entitled 'screening detention' and 'restrictive detention'.*

*I respectfully request a review to pinpoint the document(s) to which the original official referred, as well as whether there are in fact other pre-2013 documents which are not publicly available.*

*A full history of my FOI request and all correspondence is available on the Internet at this address:  
[https://www.righttoknow.org.au/request/historical\\_instructions\\_entry\\_sc](https://www.righttoknow.org.au/request/historical_instructions_entry_sc).*

#### **4 Internal Review Decision**

I have decided to vary the original decision of the Department dated 31 August 2020 ('the original decision') that the FOI Act does not apply to the documents by the operation of section 4(b) of the FOI Act.

I have substituted a decision that the FOI Act does not apply to the documents, by the operation of section 12(1)(c) of the FOI Act.

#### **5 Reasons for internal review decision: additional searches for documents**

I have considered the submissions made by you in relation to your reasons for requesting an Internal Review.

These searches confirmed that information relevant to the scope of your request is contained in the section 'Unauthorised Arrival Entry Screening' or 'Border Applicants', contained in the Department's Procedural Advice Manual 3 (PAM 3) or Migration Series Instructions (MSI). Both PAM3 and MSIs are held by the Department on its LEGEND database, an electronic database of current and historical migration and citizenship legislation and policy documents. The Department has made the LEGEND database available to the public via LEGENDcom.

LEGENDcom holds all versions of PAM3 and MSIs from 1 September 1994 onwards. Historical policy information is published in 'stacks' separated by date, the dates for each stack aligning with the commencement dates for legislation. Taking into consideration that you have sought policy information from before 13 March 2013, I searched the 'stacks' for a sample of dates in the period 1 September 1994 to 13 March 2013.

Noting that there are differences in terminology and numbering between versions of PAM3 and other policy documents over time, I was able to locate the information to which you seek access for the sample dates in the following ways:

- for the period 15 February 2013 to 22 March 2013: in 'Unauthorised Arrival Entry Screening' – section 76 (Annex: Guidelines) of the Protection Visa Procedures Advice Manual, located at Policy: PAM3 Refugee and Humanitarian
- for the period 30 October 2010 to 4 December 2010: in 'Unauthorised Arrival Entry Screening' – section 6 of the Protection Visa Procedures Manual, located at Policy: PAM3 Migration Regulations
- for the period 19 September 2001 to 26 October 2001: in 'Border Applicants' = section 2.5 of the Protection Visa Procedures Manual, located at Procedures Advice Manual 3
- for the period 12 December 1994 to 8 January 1995: in 'Border Applicants' – section 3 of MSI-52: Guidelines For Protection Visas, located at Migration Series Instructions.

Based on these searches, I am satisfied that the information to which you seek access is published on LEGENDcom for the period 1 September 1994 onwards.

## **6 Reasons for internal review Decision: whether FOI Act applies to documents**

Subsection 12(1) of the FOI Act provides that the FOI Act does not apply to certain documents as follows:

### ***12 Part not to apply to certain documents***

*(1) A person is not entitled to obtain access under this Part to:*

- (c) a document that is available for purchase by the public in accordance with arrangements made by an agency.*

I am satisfied that the documents to which you seek access is held on LEGENDcom, which is a paid subscription database of migration and citizenship legislation and policy documents. As the documents are available to the public on payment of a subscription fee, they are documents which are available for purchase by the public in accordance with arrangements made by the Department.

As such, I consider that the FOI Act does not apply to the documents, by the operation of section 12(1)(c) of the FOI Act.

## **7 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.

## **8 Your Review Rights**

### **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 reviewrights and howto 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](mailto: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.

**Position No. 11307**  
**Authorised Decision Maker**  
**Department of Home Affairs**