



21 August 2020

Mr J Singh

BY EMAIL: foi+request-6517-3145bfeb@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/07/01241

File Number: OBJ2020/24828

Dear Mr Singh

Freedom of Information (FOI) request - Access Decision

On 23 July 2020, the Department of Home Affairs (the Department) received a request for access to document 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 document:

Question 1: I would like to request the figure of how many 489 & 491 visa holders - including Secondary- are currently not in Australia?

a. Please break down into visa subclasses.

Question 2: How many 489 visa holders not in Australia will have their visa expire in the next six months? a. Please break down into month of expiry.

Question 3: why 489 and 491 visa holders are not included in the list of temporary visa holders in other requested Freedom of Information results?

a. if they are different from other temporary visa subclasses, then under the category they fall?

b. if they are same, then why they are excluded from other requested applications' outcomes?

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 document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

4 Document in scope of request

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce one document that contains information that falls within the scope of your request. The data produced in the document existed in the possession of the Department on 23 July 2020 when your FOI request was received.

The Department has undertaken reasonable searches in relation to the other documents/information you have requested access to.

Searches

In summary, the searches undertaken by the relevant business areas in relation to your request included:

The Department does not hold an existing discrete document that contains the data you are seeking.

The Department has considered whether it can extract the data in accordance with section 17(1) of the FOI Act.

The obligation for retrieving or collating information stored in a computer system arises if:

- the Department could produce a written document containing the information using a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information, and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s17(2))

In *Collection Point Pty Ltd v Commissioner of Taxation* the full bench of the Federal Court decided that if a new computer program is required to be written to produce the document then a computer is not being used in a manner that is ordinarily available to the agency because an extraordinary step is required to be taken¹.

I am satisfied that the Department is not able to produce a written document containing the information you seek in a discrete form using a computer or other equipment ordinarily available to it.

¹ *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67 [20].

Having regard to your request and the types of document that may fall within the scope of your request I am satisfied that the searches conducted were extremely thorough and all reasonable steps have been taken to locate any document relevant to your request.

5 Decision

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has undertaken reasonable searches in relation to your request in regard to Questions 2 & 3 outlined in the scope and that no documents were in the possession of the Department on 23 July 2020 when your FOI request was received. As such, I am refusing your request based on the application of section 24A of the FOI Act.

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in full- addresses Question 1 of scope.

6 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.

7 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>.

8 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.

9 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.

**Position No 60107941
Authorised Decision Maker
Department of Home Affairs**