



12 August 2020

Parth

**BY EMAIL:** [foi+request-6520-4be70d2d@righttoknow.org.au](mailto:foi+request-6520-4be70d2d@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 20/07/01249

File Number: OBJ2020/24841

Dear Parth,

**Freedom of Information (FOI) request - Access Decision**

On 23 July 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:

*I am writing to request you to provide following information in relations to visa lodged while applicant was in ACT, Australia.*

- 1. Provide number of visa application lodged by primary applicants with applicant's location in ACT (as per the address provided in visa application form), associated Visa Application subclass, lodgement month, country of citizenship of the applicant, with/without assistance of Migration Agent (Migration agent's details provided in the application).*
- 2. Number of visa applications granted and refused while the applicant was in ACT (as per the address provided in visa application form) and associated visa subclass, with/without assistance of Migration Agent (Migration agent's details provided in the application).*

**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 initial FOI request was received.

#### **Searches**

In relation to information concerning whether a migration agent were engaged at any stage of the application process, the Department does not hold an existing discrete document that contains the data you are seeking.

The Department has considered whether it can extract this 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 taken<sup>1</sup>.

To compile the information you have requested into a discrete document would require that additional and extraordinary measures be undertaken. This is not what section 17 of the FOI Act requires. Section 17 only requires a new document to be created when it is possible to do so using a computer or other equipment to extract data.

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

The data you have requested is of a detail that cannot be reported on from the Department's computer systems. Either the data is not collected to that granular detail, or it is not possible to extract the data using a computer system in a manner that is ordinarily available to it.

I am satisfied that the Department is not able to produce a written document containing the information you seek in your request which relates to engagement of a migration agent in a discrete form using a computer or other equipment ordinarily available to it.

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 this part of scope.

## **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 use of a migration agent 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 this part of your request based on the application of section 24A of the FOI Act.

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

## **6 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.

## **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](mailto: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 <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## **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](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.

## **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](mailto:foi@homeaffairs.gov.au).

*Signed electronically*

### **Position number 60081621**

Authorised Decision Maker | Freedom of Information Section  
FOI and Records Management Branch  
Data Division | Strategy and Law Enforcement Group  
Department of Home Affairs