



Australian Government
Department of Immigration and Border Protection

15 July 2014

In reply please quote:

FOI Request FA 14/07/00181
File Number ADF2014/23613

Daniel

Email: foi+request-667-e3f8c4e5@righttoknow.org.au

Dear Daniel

Freedom of Information request – Decision on request - Access

This letter refers to an access request received under the *Freedom of Information Act 1982* (the Act) received on 4 July 2014.

You requested access to the following information:

- “1. Was the Department involved in the design of the logo for Border Force?*
- 2. Was the design in-house, or through a contractor?*
- 3. How much did it cost if through a contractor?*
- 4. How many labour hours were spent creating the Border Force logo if in-house and how large was the team (including a breakdown by APS classification)?*
- 5. Please release all correspondence relating to the design of the Border Logo. “*

The department has not accepted your parts 1-4 of your request as valid under the *Freedom of Information Act 1982* (FOI Act). This is because your request is for 'information' and not for a document in the department's possession at the time of your request. I will outline more fully the reasons for this below.

Access to Documents

The right to request documents under the FOI Act is outlined in the Guidelines published by the Office of the Australian Information Commissioner (OAIC):

Section 11(1) of the FOI Act gives every person a legally enforceable right to obtain access to a document of an agency or an official document of a minister, unless the document is exempt. [para 2.1]

The right of access enshrined in the FOI Act applies to 'documents'. This term is defined in s 4(1) to include maps, photographs, and any article from which sounds, images or writing are capable of being reproduced (for example, emails). There is no general obligation on agencies to reduce information to written documentary form in order to facilitate an FOI request, except in relation to information that is stored on a computer tape or disk (s 17). [para 1.26]

The right of access is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format (see Part 8

people our business

of these Guidelines) or where the information is stored in an agency computer system rather than in discrete form.

The right of access applies to documents that exist at the time the FOI request was made. [para 3.8]

Therefore, any general request for 'information' or 'data' that does not already exist in a document held by the department is considered an invalid request.

The full Guidelines can be accessed on the OAIC's website at: <http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/>

Advice

I consulted with the department's Communications and Media branch, who advised that no Border Force logo has been developed within the department at the present time.

Decision

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents. My decision is to refuse access under section 24A(1) of the FOI Act, on the grounds that all reasonable steps have been taken to find the documents and I am satisfied that the document does not exist.

As the document does not exist, I am refusing your request for access.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the department my 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 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:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@immi.gov.au

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au .

How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au .

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Mel Heggart
Authorised decision maker
FOI & Privacy Policy Section
Parliamentary and Executive Coordination Branch
Department of Immigration and Border Protection
Phone (02) 6264 3131
Email foi@immi.gov.au

Attachments:

- ✓ Extract from relevant legislation

Extract of relevant legislation

6C Requirement for Commonwealth contracts

- (1) This section applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.
- (2) The agency must take contractual measures to ensure that the agency receives a document if:
 - (a) the document is created by, or is in the possession of:
 - (i) a contracted service provider for the Commonwealth contract; or
 - (ii) a subcontractor for the Commonwealth contract; and
 - (b) the document relates to the performance of the Commonwealth contract (and not to the entry into that contract); and
 - (c) the agency receives a request for access to the document.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.