



9 December 2020

Tharun Thatikonda  
**BY EMAIL: [foi+request-6772-4a966c29@righttoknow.org.au](mailto:foi+request-6772-4a966c29@righttoknow.org.au)**

**In reply please quote:**

FOI Request: FA 20/10/00093-R1  
File Number: OBJ2020/31247

Dear Tharun Thatikonda

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

I refer to your correspondence dated 14 November 2020 in which you request that the Department of Home Affairs (the Department) review its decision on access to documents dated 15 October 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:

*Details regarding wasted invitations primary applicants for SC 189 in the financial year 2019-20 for each pro rata occupations individually and all the non pro rata occupations combined.*

**2 Original Decision on access dated 15 October 2020**

The Department conducted reasonable searches and found no documents that fell within the scope of your original request. As such, a decision was made under section 24A of the Act to refuse access to the documents sought.

**3 Request for Internal Review**

On 14 November 2020, you requested the Department to review its decision dated 15 December 2020. In your request, you stated:

*I want to go for an internal review on my FOI request decision. I can see in some online forums these kind of data is released by DHA 1 or 2 years, in the response given to me mentions that current systems programming can't retrieve details requested which is similar to data released by DHA previously.*

*If DHA systems can't retrieve the data can I know is their any programming changes made to DHA systems in respect to handling of EOI and visa applications data.*

#### **4 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 documents or to amend or annotate departmental records.

In accordance with section 54C(3) of the FOI Act, I have made a fresh decision on your FOI request.

#### **5 Information considered**

In reaching my decision, I have considered the following:

- the scope of your request
- the Department's original decision of 15 October 2020 and the evidence gathered for that decision
- your submissions in relation to your reasons for requesting an internal review
- the documents falling within the scope of your request
- advice from departmental officers with responsibility for matters relating to the information to which you sought access
- the FOI Act, and
- the Australian Information Commissioner's guidelines relating to the interpretation, operation and administration of the FOI Act (the FOI guidelines).

#### **6 Internal Review Decision**

I have decided to affirm the original decision of the Department dated 15 December 2020 ("the original decision") in relation to the documents previously identified by the Department as falling within the scope of your request.

#### **7 Reasons for Internal Review Decision**

I have reviewed the documents that fall within the scope of this request and I have considered the submissions made by you in relation to your reasons for requesting an Internal Review.

**Section 24A of the FOI Act** – Requests may be refused if documents cannot be found, do not exist or have not been received

#### **Section 24A**

*(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.*

Section 24A of the FOI Act provides that requests may be refused if documents cannot be found, do not exist or have not been received.

The FOI Guidelines [at 3.85] further clarify that:

*3.85 An agency or minister may refuse a request if it has taken 'all reasonable steps' to find the document requested, and is satisfied that the document cannot be found or does not exist (s 24A(1)). There are two elements that must be established before an agency or minister can refuse a request for access to a document under s 24A:*

- *the agency or minister must have taken all reasonable steps to find the document, and*
- *the agency or minister is satisfied that the document cannot be found or does not exist.*

#### Searches undertaken and outcomes of searches

On 5 October 2020, FOI contacted the business area with responsibility for the information you are seeking to access to determine whether the Department holds the requested information.

On 14 October 2020, the business area advised:

*'The Department does not have reports available which provide an answer for this request. We do not report where an applicant has been invited but has not applied for a visa. It is noted that 'wasted EOI' is not terminology used by the Department.*

On 9 December 2020, the business area confirmed that the above advice has not changed.

#### Whether searches for documents reasonable

The Guidelines at [3.88] notes that the Act is silent on what constitutes 'all reasonable steps', but suggests that the term should be:

*'construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such as amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose'.*

I am satisfied, as per 3.89 of the FOI Guidelines, that the searches undertaken by the Department for this request were reasonable in terms of:

- the subject matter of any potential documents
- the file management systems used by both FOI and the responsible business area to hold such documents/information
- the case record management systems in place to record FOI case notes
- the individuals within the Department likely to hold or have had contact with documents potentially in scope of the request
- the age of any potential documents.

The responsible business area has advised that the information you request is not available and on 9 December 2020 confirmed that there have not been any significant changes to the SkillSelect Dashboard since the original decision which would materially change this advice. I am therefore satisfied that the Department has taken all reasonable steps to find documents that fall within the scope of the request, and that relevant documents do not exist.

I have therefore decided to refuse your request under section 24A of the FOI Act.

## 8 Additional information

In your internal review request, you asked for clarification of any programming changes made to Departmental systems with respect to handling and visa applications data.

The Department launched its SkillSelect Dashboard on 27 March 2020. The SkillSelect Dashboard was designed to provide the public statistical information about the SkillSelect Program, consistent with the Department's obligation under section 8(2)(g) of the FOI Act to publish information which it routinely provides access in response to FOI access requests. After some changes mid-year, the Dashboard was relaunched on 31 July 2020.

The Dashboard is located at:

[https://api.dynamic.reports.employment.gov.au/anonap/extensions/hSKLS02\\_SkillSelect\\_EOI\\_Data/hSKLS02\\_SkillSelect\\_EOI\\_Data.html](https://api.dynamic.reports.employment.gov.au/anonap/extensions/hSKLS02_SkillSelect_EOI_Data/hSKLS02_SkillSelect_EOI_Data.html)

## 9 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.

## 10 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 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>.

## 11 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.

**Rebecca**  
**Authorised Decision Maker**  
**Department of Home Affairs**