



9 December 2021

Mr Martin Steven  
**BY EMAIL: [foi+request-7982-9cddfd9@righttoknow.org.au](mailto:foi+request-7982-9cddfd9@righttoknow.org.au)**

**In reply please quote:**  
FOI Request: FA 21/10/00691-R1  
File Number: OBJ2021/30843

Dear Mr Steven

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

I refer to your correspondence dated 16 November 2021 in which you requested that the Department of Home Affairs (the Department) review its decision on access to documents dated 5 November 2021 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 would like to know the total number of applicants, as of 18th October 2021, that have been approved for Australian citizenship and are waiting to attend a Citizenship Ceremony in the Sunshine Coast Council area. Furthermore, I'd like to know the current wait time between citizenship approval and ceremony in the Sunshine Coast Council area.*

#### **2 Original decision on access dated 5 November 2021**

##### Documents within scope

In accordance with section 17 of the FOI Act, the Department used its computer system to produce the following document containing information relevant to your request.

- Number of people as at 22 October 2021 whose application for Australian citizenship by conferral had been approved and who were waiting to attend an Australian citizenship ceremony at the Sunshine Coast Regional Council (QLD) – 1 page

The information was held on the Department's computer systems on 18 October 2021, when the Department received your request for access.

The Department did not identify any documents corresponding with part B of your request but referred you to information contained on the Department's website.

### Decision on access

The original decision maker decided to:

- release the document in full.

### **3 Request for internal review**

On 16 November 2021, you requested the Department review its decision dated 5 November 2021. 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 'Current citizenship ceremony waiting times for Sunshine Coast Council'.*

*I had two questions in the request but only one was answered. Would you be able to answer the second part please?*

### **4 Scope of internal review**

Based on the terms of your internal review in paragraph 3 above, I consider you are seeking review of:

- the searches conducted by the Department in its original decision, including considerations as to whether documents could be produced from computer systems pursuant to section 17 of the FOI Act
- the Department's decision, following those searches, to identify only the documents indicated at paragraph 2 above as falling within the scope of your request, and not the documents indicated in your request for internal review, namely:

...the current wait time between citizenship approval and ceremony in the Sunshine Coast Council area.

I consider you have not sought review of the Department's decision on the [other] documents it identified as falling within the scope of the request in its original decision. Accordingly, the Department has not re-assessed these documents as part of this internal review decision, and will not be providing you with another copy of these documents.

### **5 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.

### **6 Information considered**

In reaching my decision, I have considered the following:

- the scope of your request

- the Department's original decision of 8 October 2020 and the evidence gathered for that decision
- 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).

## **7 Authority to make decision**

I am authorised under section 23 the FOI Act to make decisions to release and to refuse access to exempt documents and to conduct internal reviews.

## **8 Internal review decision**

I have decided to vary the original decision of the Department dated 8 October 2021. I have set aside part of the decision and replaced it with the following decision:

- to refuse the following part of your request under section 24A of the FOI Act:

*...the current wait time between citizenship approval and ceremony in the Sunshine Coast Council area.*

## **9 Reasons for internal review decision: refusal of access to documents that cannot be found or do not exist**

Section 24A of the FOI Act provides that the Department may refuse access to a document when that document cannot be found or does not exist. Before the Department can make a decision under section 24A, it must be satisfied that it has taken all reasonable steps to locate relevant documents, including searches of computer systems to determine whether documents can be produced from these systems.

### Additional searches for documents

The additional searches undertaken by the Department for further documents within the scope of your request involved enquiries with the responsible business area of the Department. As the responsible business area has previously advised that the requested by you was not held in discrete form in existing documents, the enquiries sought to determine:

- the extent of data held by the Department on its computer systems
- whether the Department is able to produce a document containing the information sought by you from this data
- the processes involved in producing a document.

### Outcomes of searches

The relevant business area advised that

- The Department holds information indicating those individuals who attended citizenship ceremonies at the Sunshine Coast Regional Council and those individuals whose application for Australian citizenship by conferral had been approved and who

were waiting to attend a ceremony. The Department also holds information indicating the date on which each individual's citizenship application was approved by the Department.

- Significant manual work would be required to calculate the average waiting times. This would involve:
- individually reviewing the client records of individuals who were awaiting a citizenship ceremony at the Sunshine Coast Regional Council and who had already attended a ceremony
- identifying the citizenship approval date for those individuals
- for each individual – calculating and recording the number of elapsed days since the approval date (for individuals awaiting a citizenship ceremony) or between the approval and ceremony date (for individuals who have attended a ceremony)
- calculating the average approval date from the elapsed days recorded for each individual.
- There is no existing information product that is able to produce the data without the above manual intervention. The data is also not available within existing reporting systems.
- The Department does not hold any existing documents that contain the information.

#### Whether section 17 of FOI Act applies to request

Section 17 of the FOI Act applies 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 (s. 17(1)(c)(i)), and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s. 17(2))

In considering whether section 17 applies to the request, I am guided by paragraph 3.207 of the FOI Guidelines, citing the decision of the Full Federal Court in *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67; 95 ATR 334, in which the Full Federal Court:

*...held that the reference in s 17(1)(c)(i) to a 'computer or other equipment that is ordinarily available' means 'a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ... [T]he computer or other equipment must be capable of functioning independently to collate or retrieve stored information and to produce the requested document.' This will be a question of fact in the individual case, and may require consideration of 'the agency's ordinary or usual conduct and operations'. For example, new software may be ordinarily available to an agency that routinely commissions or otherwise obtains such software, but not to an agency that does not routinely do such things.*

In the earlier decision of the Federal Court in *Collection Point*, the Court found 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.*

Both Courts confirmed the earlier view of the Administrative Appeals Tribunal that:

*The documents requested by Collection Point were not capable of being produced by the ATO by the use of a computer, being a use that is ordinarily available to the ATO for retrieving and collating stored information. Instead, to answer the request, the ATO would have been required to use a computer in an extraordinary manner, as compared to the ordinary processes available for the retrieval and collation of such material.*

Having considered the response provided by the business area as indicated above, I am satisfied that the information to which you seek access is not available via ordinary use of the Department's computer systems. The business area instructs that it would need to take an extraordinary step to retrieve, collate and produce a document containing this information, involving the manual interrogation of a computer system and the manual compilation and calculation of data. I am satisfied that these manual processes of creating a document go beyond the requirements imposed by section 17(1)(c)(i) of the FOI Act.

I have accordingly found that the obligation to produce a document under section 17 of the FOI Act does not apply in this instance.

*Whether all reasonable steps taken to locate documents*

Paragraph 3.88 of the FOI Guidelines notes that the Act is silent on what constitutes 'all reasonable steps' to search for a document, 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'.*

Paragraph 3.89 of the FOI Guidelines further provides that, at a minimum, an agency's searches for documents should have regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents
- the record management systems in place
- the individuals within an agency or minister's office who may be able to assist with the location of documents, and
- the age of the documents.

Having considered the searches conducted above, and the outcomes of these searches, I am satisfied that the Department has undertaken all reasonable steps to locate these documents. In making this decision, I have taken into consideration:

- that the business area consulted was best placed to advise of the existence of discrete documents and the capacity of the Department to produce a document containing the requested information
- the advice from the business area was that it is unable to produce a document containing the information using the 'ordinary use' of the Department's computer systems

- the advice from the business area was that no existing documents were held or produced by the Department that already contain the relevant information.

I have accordingly refused this part of your request under section 24A of the FOI Act.

## **10 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.

## **11 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 <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

## **12 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.

## **13 Contact**

Should you wish to discuss my decision, please do not hesitate to contact via email at [foi.reviews@homeaffairs.gov.au](mailto:foi.reviews@homeaffairs.gov.au).

**Jack**

**Position No. 11307**

**Authorised Decision Maker**

**Department of Home Affairs**