



15 December 2021

Mehta, Ray

**BY EMAIL:** [foi+request-7994-ecd42ccb@righttoknow.org.au](mailto:foi+request-7994-ecd42ccb@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 21/10/00909

File Number: OBJ2021/31215

Dear Mehta,

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

On 20 October 2021, 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:

*Kindly provide the below data for Visa applications decided between 1 July 2018 till date (20 October 2021) where a registered migration agent or an authorised recipient was used.*

- Visas Granted where the application is represented by a registered migration agent
- Visas refused where the application is represented by a registered migration agent

*And for the same years:*

- Visa granted where the application is unrepresented or represented by a person who is not a registered migration agent.
- Visa refused where the application is unrepresented or represented by a person who is not a registered migration agent.

*Please provide separate statistics for the above for at least each of the following visa subclasses:*

*Student for Subclass 500  
Visitor Visa for Subclass 600  
Skilled for Subclass 189, 190  
Partner for Subclass 309, 100.*

## 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 20 October 2021 when your initial FOI request was received.

## 5 Decision

The Department has consulted with the relevant area of the business in relation to the documents you have requested access to and finds no relevant document holdings with some parts of the scope of your request:

*Student for Subclass 500 - Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent. Data provided only allows reporting over a discrete 12 month period therefore, there is no data from 1 July 2021 to 20 October 2021.*

*Visitor Visa for Subclass 600 – Visas granted and refused where the application is represented by a registered migration agent; Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent*

*Skilled for Subclass 189, 190 - Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent*

*Partner for Subclass 309, 100 - Visas granted and refused where the application is represented by a registered migration agent; Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent*

### **Searches**

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>.

The Department's ordinary use of computer systems includes measures to produce regular reports on citizenship data; however the data you have requested is of a type that is not produced as part of this regular business reporting cycle.

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.

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 level of 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 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 your request. The decision in relation to the documents in the possession of the Department which address parts of the scope:

*'Student for Subclass 500 - Visa granted and refused where the application is represented by a registered migration agent'*

*'Skilled for Subclass 189, 190 - Visa granted and refused where the application is represented by a registered migration agent'* is as follows:

- Release one document in full

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

The decision in relation to that part of scope which seeks information is as follows:

*Student for Subclass 500 - Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent. Data provided only allows reporting over a discrete 12 month period therefore, there is no data from 1 July 2021 to 20 October 2021.*

*Visitor Visa for Subclass 600 – Visas granted and refused where the application is represented by a registered migration agent; Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent*

*Skilled for Subclass 189, 190 - Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent*

*Partner for Subclass 309, 100 - Visas granted and refused where the application is represented by a registered migration agent; Visa granted and refused where the application is unrepresented or represented by a person who is not a registered migration agent:*

- Refuse in full

#### **5.1 Section 24A – No document exists**

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 that part of your request which seeks information relating to the refusal of access and that no documents were in the possession of the Department on 20 October 2021 when your FOI request was received. As such I am refusing access to the documents requested by you based on the application of section 24A of the FOI Act

#### **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**

*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*

**Min Ai**

**Position number 60120967**

Authorised Decision Maker | Freedom of Information Section

FOI and Records Management Branch

Strategy and National Resilience Group

Department of Home Affairs