



20 April 2022

Sarath
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In reply please quote:

FOI Request: FA 22/03/00245
File Number: OBJ2022/7194

Dear Sarath

Decision on Internal Review – Freedom of Information Act 1982

I refer to your correspondence dated 28 March 2022 in which you requested that the Department of Home Affairs (the Department) review its decision on access to documents dated 15 March 2022 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:

Please let me know the invitations issued by NSW government for the following occupations under SC190 for current financial year so far i.e. 2021-2022.

Total number of invitations issued for

- 1) Software engineer (261313)
- 2) 261312 Developer Programmer
- 3) 263111 Computer Network and Systems Engineer
- 4) 261111 ICT Business Analyst
- 5) 261112 Systems Analyst
- 6) 261212 Web Developer
- 7) 261211 Multimedia Specialist

2 Original decision on access dated 15 March 2022

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 28 March 2022, you requested the Department review its decision dated 15 March 2022. The terms of your review request were as follows:

I am writing to request an internal review of Department of Home Affairs' handling of my FOI request 'Total number of invitations issued for the following occupations by NSW Government for 190 skilled program for the financial year 2021-2022'.

It is really disappointing that home affairs do not have information regarding invitations issued by state governments

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 refuse your request under section 24A of the FOI Act.

5 Information considered

In reaching my decision, I have considered the following:

- the scope of your request
- the Department's original decision of 15 March 2022 and the evidence gathered for that decision
- your submissions in relation to your reasons for requesting an internal review
- advice from Departmental officers with responsibility for matters relating to the document 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 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.

7 Internal review decision

I have decided to affirm the original decision of the Department dated 15 March 2022 ("the original decision") to refuse access under section 24A of the FOI Act

I have provided the reasons for my decision below.

8 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 in accordance with section 17 of the FOI Act

8.1 Additional searches for documents and application of Section 17 of the FOI Act

The searches undertaken by the Department for 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 information requested by you is 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 was able to produce a document containing the information sought by you from this data
- the processes involved in producing a document.

Outcome of searches

The business area has advised that:

- the Department does not hold the relevant information in a discreet document
- The Department of Home Affairs publishes the SkillSelect dashboard to provide statistics about the SkillSelect Program to the public
- SkillSelect data is hosted on external servers owned by the Department of Education, Skills and Employment (DESE) and the Department does not have direct access to this data other than the dashboard.

As the information to which you seek access is known to be contained in non-discrete form in the SkillSelect system I now give consideration to whether section 17 of the FOI Act applies to the request.

Whether the Department can produce written document containing information in discrete form

The relevant Departmental business area has confirmed that:

The Department of Home Affairs publishes the SkillSelect dashboard to provide statistics about the SkillSelect Program to the public. The SkillSelect data is hosted on external servers to the Department and the Department does not have access to this data, beyond the SkillSelect dashboard. Where information sought is not available through the SkillSelect dashboard in the form requested, producing a document containing the information would involve the Department arranging for DESE, as operators of the SkillSelect system, to extract the data from the system.

That process involves interrogating tables of data, which requires writing individual report codes to obtain the bespoke data request. Development of additional code does not fall under the existing maintenance arrangements/contracts with DESE. The Department is required to submit a Project Change Request (PRC) to DESE for all requests for data. I

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(1)(c)(i) applies to this request, I am guided by ABE and Department of Home Affairs (Freedom of information) ALCmr25924 March 2022 where the Information Commissioner found that in regard to data hosted on the SkillSelect System:

the following factors indicate that the Department does not have an effective means of producing a document by the use of a computer or other equipment that is ordinarily available to it:

- *the SkillSelect data is hosted on external servers owned by DESE and the Department does not have direct access to this data*
- *additional code would be required to generate documents containing the information requested and the code would need to be written by DESE, as operators of the SkillSelect System*
- *the production of the requested information is governed by the arrangements specified in the MOU between the Department and DESE*
- *The development of the code does not fall under the existing maintenance arrangements and therefore requires a Project Change Request, along with a costing assessment, allocation of staffing resources and additional funding.*

As the same limitations above considered by the Information Commissioner apply to your request, - I am satisfied that the information you seek is not ordinarily available by use of the Department's computer systems. I am therefore satisfied that section 17(1) (c) of the FOI Act does not apply to your access request.

I note that you will be able to find the data you requested in the SkillSelect dashboard by making a series of searches/interrogation so that you will be able to collect the data although in a format other than that you requested.

8.2 Section 24A refusal of access to documents that cannot be found or do not exist

Before the Department can make a decision under section 24A, it must be also be satisfied that it has taken all reasonable steps to locate relevant documents.

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'.

In accordance with Paragraph 3.89 of the FOI Guidelines, the Department's searches for documents had regard to:

- the subject matter of your request
- the capacity of the Department's reporting systems
- the record management systems in place
- the individuals within an agency who may be able to assist with the location of documents, and
- the age of the documents.

Having considered the searches conducted, the outcomes of these searches and the advice received from the relevant business area, 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 subject matter of your request indicates that the information is not held in discrete documents but is held on the SkillSelect computer system.
- that the business area consulted was best placed to advise of the Department's capacity to produce documents from the SkillSelect computer system that contained the data requested.
- the advice from this business area that the Department was unable to produce a document using the ordinary use of its computer systems.

I have therefore decided that the Department has taken all reasonable steps to find a Document that falls within the scope of the request as it was required to do by section 24A of the FOI Act, and that:

- a discrete document does not exist
- the Department cannot produce a written document containing the information by the use of a computer or other equipment that is ordinarily available, as would otherwise be required by section 17 of the FOI Act.

I am accordingly refusing your request under section 24A(1) of the FOI Act.

9 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.

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

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

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.

12 Contact

Should you wish to discuss my decision, please do not hesitate to contact via email at foi.reviews@homeaffairs.gov.au.

Antonette
Position Number 60016903
Authorised Decision Maker
FOI Reviews Team
Department of Home Affairs