



Australian Government
Department of Immigration and Border Protection

13 February 2015

In reply please quote:

FOI Request FA 15/01/00668

File Number ADF2015/2117

Mr Patrick Gardner
Right to Know

Sent by email to: foi+request-876-2e00715d@righttoknow.org.au

Dear Mr Gardner

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 15 January 2015.

You requested access to documents, as follows:

I would like to request all documents that make reference to a decision, request or other process which lead to the recent removal of transcripts or media releases from the DIBP website, where those documents were produced some time between 1 September 2014 and 1 January 2015.

My request does not extend to any media releases or transcripts which were, themselves, removed from the website.

Advice

I consulted within the department regarding the documents in question. The relevant business areas have advised that they are not aware of any requests or actions to take down media releases or transcripts from the department's website or the Minister's website. There have also been no requests to remove transcripts or media releases from the department's newsroom.

people our business

6 Chan Street Belconnen ACT 2617

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The transcripts and media releases under the previous Minister, Mr Morrison, have been archived and are still publicly available through the following link:

<http://pandora.nla.gov.au/tep/143035>.

The same link is also available on the current minister's website:

<http://www.minister.immi.gov.au/peterdutton/media/>

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 Act. My reasons are set out below.

Section 24A(1) of the Act provides that an agency may refuse access to a request if the decision maker is satisfied that all reasonable steps have been taken to find the requested documents but that the documents do not exist.

On the basis of the information from the business area, I am satisfied that the department has taken all reasonable steps to find any relevant documents, as required by s.24A(1)(a) of the Act. I am also satisfied that the department does not hold any documents that fall within the scope of your request. Therefore I am refusing your request for access under s.24A(1)(b)(ii) of the Act, on the basis that the documents do not exist.

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



Marianne Nolte-Crimp
Authorised FOI Decision Maker
Freedom of Information Section
Department of Immigration and Border Protection
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.

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.

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.