



7 July 2022

Jay

BY EMAIL: oi+request-8949-74874a60@righttoknow.org.au

In reply please quote:

FOI Request: FA 22/05/01240

File Number: OBJ2022/13219

Dear Jay

Decision on Internal Review – Freedom of Information Act 1982

I refer to your correspondence dated 7 July 2022 in which you requested that the Department of Home Affairs (the Department) review its decision on access to documents dated 7 June 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:

I was wondering if there was any data in relation to the time taken for visa grants calculated from the first S56 request issued by the department for partner (820/801) visas.

2 Original decision on access dated 7 June 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 7 June 2022, you requested the Department review its decision dated 7 June 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 'Time taken for visa grant calculated from date of s56 request'.

While there is data for time taken for visa grant calculated from the date of lodgement, it is shocking to find that there is no data in relation times calculated from the 1st s56 request.

We would like to at least know how s56 requests are managed as there have been cases where s56 was requested (health PCC checks) and there is no follow up until the checks have expired / no decision.

Please at least highlight any policies or guidance provided to the visa processing officers when handling s56 cases to avoid such cases, as there are costs involved to the applicant due to such delays. If there are any QC/ checks or mechanisms in place to avoid such occurrence, please also highlight it.

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 to documents requested in your original decision namely:

any data in relation to the time taken for visa grants calculated from the first S56 request issued by the department for partner (820/801) visas.

Please note that the Department can only review the decision made on your original request.

As part of your review submission you also requested documents not included in the scope of your original request as follows:

- *We would like to at least know how s56 requests are managed as there have been cases where s56 was requested (health PCC checks) and there is no follow up until the checks have expired / no decision.*
- *Please at least highlight any policies or guidance provided to the visa processing officers when handling s56 cases to avoid such cases, as there are costs involved to the applicant due to such delays. If there are any QC/ checks or mechanisms in place to avoid such occurrence, please also highlight it.*

This part of your submission has not been included this Internal Review. However as advised in our acknowledgement letter dated 10/06/2022 a new FOI access request has been registered in your name for the above documents. This request, FA22/06/00381 is currently being processed by the Department.

5 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.

6 Information considered

I have considered:

- the terms of your original request
- the submission made by you in support of your request for internal review
- the searches conducted in the original decision
- information held on departmental systems
- consultation with relevant business area
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI guidelines).

7 Internal review decision

I have decided to affirm the original decision of the Department dated 7 June 2022 (“the original decision”) as no documents falling within the scope of your request have been identified.

8 Reasons for internal review decision

I have considered the submissions made by you in relation to your reasons for requesting an Internal Review and reviewed the searches undertaken by the Department to locate the data requested.

8.1 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.

Outcome of searches

The business area advised that the information requested by you is not held in discrete form in existing documents. The Department therefore 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.

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

The relevant Departmental business area has confirmed that:

- Departmental reports are not produced on visa processing times from the time that requests for information (s56 letters) are sent to applicants in accordance with s56 of the Migration Act 1958.
- This information is not readily available in regular reporting and current systems functionality does not allow for the automated extraction of this information.
- Determining processing times from time of s56 letter issuance to visa application finalisation would require resource intensive manual systems checks to be undertaken at the individual case level.
- Partner visa processing times are instead measured from the time of visa application lodgement, or from the date of eligibility for assessment for a second stage Partner visa application.

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 paragraph 3.215 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.

On the advice of the business area, I am satisfied that producing a document to respond to your request, which would involve the manual interrogation of systems for each individual application, represents a ‘non-ordinary’ use of a computer by the Department am therefore 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.

8.2 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 your request and that no documents were in the possession of the Department on 26 May 2022 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

9 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>.

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.

Electronically Signed

Antonette
Authorised Decision Maker | Position Number 60016903
Freedom of Information Reviews Team
FOI and Records Management Branch | Data Division
Strategy and National Resilience Group
Department of Home Affairs