



21 July 2022

James Scullin

BY EMAIL: foi+request-9081-2ecd4bb7@righttoknow.org.au

In reply please quote:

FOI Request: FA 22/07/00176

File Number: OBJ2022/17805

Dear James,

Freedom of Information (FOI) request – Access Decision

On 2 July 2022, 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:

Amended scope

I am now seeking the Assessment Manuals provided to visa processing officers in relation to the visa assessment process of the Business Innovation and Investment (Permanent) 888 visas (Business innovation stream).

Original scope

I would like to request any documents relating to the assessment process of the Business Innovation and Investment (Permanent) visa [Business Innovation Stream].

The documents I am seeking include but are not limited to

(1) Assessment Manual provided to visa processing officers in relation to the visa assessment process of the 888 visas (Business innovation stream).

(2) Other documents that relate to the process of 888 visa (Business Innovation Stream).

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 documents 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 documents to which you sought access

4 Documents in scope of request

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 to scope.

The Department has considered whether it holds documents that may meet the scope of your request. Section 4 of the FOI Act provides that a *document* for the purposes of the Act does not include:

(d) material maintained for reference purposes that is otherwise publicly available

The Department has undertaken reasonable searches in relation to the documents you have requested access to. For the purposes of the FOI Act, as the information you have requested is available publically, the Department finds that it does not hold any document.

4.1 Reasons for decision

Section 4 of the FOI Act provides that a document for the purpose of the FOI Act does not include material maintained for reference purposes that is otherwise publically available.

In considering the scope I find that the documents that are in scope for this request, being the Department's internal policies for assessing and making a determination on a Business Innovation and Investment (Permanent) 888 visas (Business innovation stream), are publicly available on LEGENDcom, which is an electronic database of migration and citizenship legislation and policy documents', which forms part of the Procedures Advice Manual 3 (PAM3). This is a document that is publicly-available via a number of State or Territory libraries that subscribe to LEGENDcom via the "Library Deposit and Free Issue Scheme" (LDS).

The Department provides information about the participating libraries and the LDS via its website, which can be accessed at the below link:

<https://immi.homeaffairs.gov.au/help-support/tools/legendcom>

As such, I am of the view that the objects of the FOI Act, in terms of providing the Australian community access to this information, have been met.

I have further considered that the Department would be unable to guarantee the currency of this document as changes to policy and procedure regularly occur and this document would be provided at a particular point in time, therefore the document may become significantly outdated

within a short period of time. I have considered that this could invite subsequent and potentially multiple requests for access to the same document.

The information you have requested may be accessed freely at the above location without any need to formally request the information and wait for such a request to be processed. Bypassing the FOI process and accessing the information in the public domain will significantly reduce delays in obtaining the same information and ensure that the information is the most up-to-date.

5 Decision

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 2 July 2022 when your FOI request was received. As such, I am refusing your request 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/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

7 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this 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 a 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:

By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

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/>.

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

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.

Yours sincerely,

Signed electronically

Joanne

Position Number: 60100057

Authorised Decision Maker

Department of Home Affairs