



18 November 2022

James Scullin

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In reply please quote:

FOI Request: FA 22/09/01527

File Number: OBJ2022/26088

Dear Mr Scullin

Freedom of Information (FOI) request - Access Decision

On 27 September 2022, the Department of Home Affairs (the Department) received a request for access to document 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 document:

- 1. Number of visa processing officers who process Business Innovation and Investment visa subclass 888. And in particular, if applicable, visa officers who process each stream of the 888 visas (Business Innovation, Investor and Significant Investor)*
- 2. Correspondence between Migration Agents and the Department regarding updates on the processing of the 888 visas (From January 2022 to the most current).*
- 3. Number of 888 visa applications that are currently been processed by the Department. In specific, the number of applications within the different streams. (Until most current)*

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

The Department has identified two documents as falling within the scope of your request. These documents were in the possession of the Department on 27 September 2022 when your request was received.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Refuse one document from release (part 1)
- Release two documents in full (parts 2 and 3)

6 Reasons for Decision

Detailed reasons for my decision are set out below.

6.1 Searches

The Department does not hold an existing discrete document that provides the number of visa processing officers who process Business Innovation and Investment (subclass 888) visas (part 1).

The Skilled Program Delivery Network operates a collective case management model for all General Skilled Migration visa subclasses. This model means that no single visa application is processed by any one individual and therefore we are unable to determine decision maker resources assigned to a particular subclass.

The Department has considered whether it can extract the 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 taken¹.

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

I am satisfied that the Department is not able to produce a written document containing the information you seek in a discrete form using a computer or other equipment ordinarily available to it.

Having regard to your request and the types of documents 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 documents relevant to part 1 of your request.

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 documents relating to part 1 of your request were not in the possession of the Department on 27 September 2022 when your FOI request was received. As such, I am **refusing part 1** of your request based on the application of section 24A of the FOI Act.

Note that for **part 2** of your request, individual responses to migration agent enquires would have contained references to processing timeframes from the department's website, the ministerial processing direction in place at the time.

Information regarding the processing times for subclass 888 applications can be found on the Department's website: Global visa processing times (homeaffairs.gov.au) – where the average finalisation time frame for all streams are listed.

Any information about changes to processing would also be included in the Skilled Visa Newsletter, which is available via our website - Skilled visa newsletters (homeaffairs.gov.au). The primary audience for the Skilled visa newsletters is Registered Migration Agents (RMAs). These newsletters are intended to give an overview of recent changes to migration visa policy and practice for the attention of RMAs. The March 2022 edition of the Skilled visa newsletter contains some information relating to the Business Innovation and Investment Program (BIIP) visas which include the subclass 888 visa.

7 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.

8 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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

9 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.

10 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.

Elaine position number 60097486
Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982**

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No.	Date of document	No. of pages	Description	Decision on release	
1.	8 Nov 2022	6	Automated Department responses to the visa processing centre mailbox (business.skills.adelaide@homeaffairs.gov.au) and the Business Innovation and Investment program management mailbox (business.innovation@homeaffairs.gov.au)	Released in full	-
2.	-	1	Number of subclass 888 visa applications on hand by stream as at 30 September 2022.	Released in full	-