



6 April 2023

Mr Benjamin Limmings
BY EMAIL: foi+request-9628-be2b741a@righttoknow.org.au

In reply please quote:

FOI Request: FA 22/11/01438-R1
File Number: FA22/11/01438

Dear Mr Limmings

Decision on Internal Review – Freedom of Information Act 1982

I refer to your correspondence dated 20 March 2023 in which you requested that the Department of Home Affairs (the Department) review its decision on access to documents dated 15 March 2023 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 am requesting the number of visa subclass 601 (Electronic Travel Authority) applications, and the number of those which were flagged for further processing and such communicated to the application, by the list of countries eligible for visa subclass 601, between the dates of 7 Feb 2022 and 28 Nov 2022.

To clarify, I am seeking data in the along the lines of:

<i>Country</i>	<i>Number of Applicants</i>	<i>Count of flagged for further processing</i>
<i>Country A</i>	<i>1000</i>	<i>900</i>
<i>Country B</i>	<i>5000</i>	<i>1900</i>

2 Original decision on access dated 15 March 2023

The Department conducted reasonable searches and identified one document as falling within the scope of your original request. This document was in the possession of Department on 28 November 2022 when your FOI request was received.

The original decision maker decided to:

- Release one document in full.

3 Request for internal review

On 20 March 2023, you requested the Department review its decision dated 15 March 2023. 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 'Number of visa subclass 601 applications, and further processing, by country'.

Payment was made on 6 Feb 2023, but was only released on 15 March 2023, 37 days later.

As the information was released outside the statutory time limit, per section 4.46 of the OAIC Freedom of information guidance for government agencies

(<https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-4-charges-for-providing-access>), I am requesting a refund of AUD75 paid under ss 7(2) of the Freedom of Information (Charges) Regulations 2019'.

4 Scope of internal review

Based on the terms of your internal review in paragraph 3, I consider you are seeking review of the Department's decision to charge you a processing fee under section 29 of the FOI Act, because payment was taken outside the statutory time limit. You consider the charge is invalid under section 7(2) of the FOI (Charges) Regulations.

I consider you have not sought review of the Department's decision on the documents it identified as falling within the scope of the request in its original decision. Accordingly, the Department has not re-assessed these documents as part of this internal review decision, and will not be providing you with another copy of these documents.

5 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to release and to refuse access to exempt documents and to conduct internal reviews.

6 Relevant material

In reaching my decision, I have considered the following:

- the terms of your original request
- the terms of your request for internal review
- advice from departmental officers with responsibility for matters relating to the information to which you sought access
- whether payment of the charge, or part of it, would cause financial hardship to the applicant or a person on whose behalf the application was made
- any other relevant matter including any other submission as to why a charge should be reduced or waived
- The *Freedom of Information (Charges) Regulations 2019* (the Charges Regulations);
- the *Freedom of Information Act 1982*; and
- The [Office of the Australian Information Commissioner Guidelines – Part 4 – Charges for providing access](#);

7 Financial Hardship

I have considered whether payment of the charge would cause you to suffer financial hardship. Interpretation of the term 'financial hardship' is based on *'AY' and the Australian Broadcasting Corporation [2014] AICmr 7* (28 January 2014). In this decision (summarised by the OAI's FOI Guidelines at 4.101):

'Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible'.

I note that you have not made any claim that payment of the charge would result in financial hardship to you and/or your employer. I have therefore determined that payment of the charge, or part of it, would not be contrary to the FOI Guidelines to cause financial hardship.

8 Internal review decision

I have decided to affirm the original decision of the Department dated 15 March 2023 (the original decision) in relation to the assessment of the charge and not issue a refund of the fee of \$75.00.

9 Reasons for internal review decision

The FOI Act enables the statutory timeframes to be stopped to enable specific charge processing activities; the Department refers to this as 'stopping' the clock.

To assess the statutory timeframe in this matter, I firstly acknowledge that an extension of time (EOT) of 30 days under s15AA was requested on 16 December 2022. As this request was accepted on 16 December 2022, the Department had an additional 30 days to action your request. Therefore the new due date on your request was 27 January 2023.

To assess the number of days the clock was stopped on your request, the Department stopped the clock from the date the charge notice was issued and payment on that notice is received. The relevant dates are as follows:

- 19 December 2022 – Preliminary Charge Notice issued – clock was stopped
- 23 December 2022 – Applicant contends the charge be waived or reduced or not imposed under section 29(8) of the FOI Act – clock remains stopped
- 20 January 2023 - Decision to not waive, reduce or not impose a charge issued to applicant – clock remains stopped
- 6 February 2023 – Payment is received from applicant – clock is restarted

Having calculated the dates in the above timeframe, the clock was stopped for a total of 49 days. Therefore the new due date on your request was 17 March 2023. As the Department notified you of its decision on 15 February 2023, a decision on your request was made well within the statutory time limit. As such, the Department is unable to issue you a refund on your request under 4.47 of the FOI Guidelines, as they do not apply.

10 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.

11 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/>.

12 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.

13 Contact

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

[Electronically signed]

Dale Simpson
Position No. 60159153
Authorised Decision Maker
Department of Home Affairs