



6 February 2023

Arj S

**BY EMAIL:** [foi+request-9645-8dff4d8a@righttoknow.org.au](mailto:foi+request-9645-8dff4d8a@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 22/12/00186

File Number: FA22/12/00186

Dear Arj S

**Freedom of Information (FOI) request - Access Decision**

On 3 December 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. Communications (emails and/or briefings) between the DHA and the Skilled program delivery SA (GSM and BIIP) group regarding the implementation of Ministerial Direction 100 (visa processing priorities).*

*Current processing time for all Business Innovation and Investment Visas month ending 30 November 2022 (Do note there have been no updates on DHA's website since the end of August).*

*3. Currently amount of 888 Visas (All subclasses) applications currently been processed by the DHA. Primary applicants and secondary applicants separately.*

*4. Any responses from the Skilled program delivery SA in relation to ministerial inquiries regarding the process of BIIP visas (eg 888, 188 etc)*

**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 one document as falling within the scope of your request. This document was in the possession of the Department on 3 December 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:

- Release one document in full (parts 2 and 3)
- Refuse one document in full (parts 1 and 4)

### **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 a response to part 1 or part 4 of your request.

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 taken<sup>1</sup>.

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<sup>1</sup> *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 and part 4 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 and 4 of your request were not in the possession of the Department on 3 December 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.

## **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](mailto: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](mailto:foi@homeaffairs.gov.au).

Elaine - position 60097486  
Authorised Decision Maker  
Department of Home Affairs