



13 April 2023

Rex Banner

BY EMAIL: foi+request-9757-02101b28@righttoknow.org.au

In reply please quote:

FOI Request: FA 22/12/01090

File Number: FA22/12/01090

Dear Rex Banner,

Freedom of Information (FOI) request – Access Decision

On 21 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:

I request access to documents relating to the design, procurement, staffing (head count numbers, including contracting but redact names of people), invoices & expenses and any security and/or privacy assessment of the Virtual APEC Business Travel Card (VABTC).

Please note that this request explicitly does not want personal information.

I would be grateful if you could confirm receipt of this request and provide a response within the statutory time frame of 30 days. I agree in advance to a 12 day extension of time if needed.

On 22 December 2022 the Department issued you a notice under section 24AB of the FOI Act. In response, you agreed to change the scope of your request to be:

The privacy impact assessment of the Virtual APEC Business Travel Card (VABTC) in the date range 2020-01-01 to 2022-12-22.

In line with your original request, the Department has interpreted in the scope of your request to be the privacy or security impact assessment related to the VABTC.

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 document relevant to the 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 21 December 2022 when your request was received.

5 Decision

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

- Exempt one document in full from disclosure

6 Reasons for Decision

My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33(a)(i) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the security of the Commonwealth. For the reasons set out below, I consider that there are real and substantial grounds for expecting that the disclosure of the documents exempted under section 33(a)(i) would cause damage to the security of the Commonwealth.

National Security

‘Security’ is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time.¹ ‘Security of the Commonwealth’ is defined in section 4(5) of the FOI Act as follows:

¹ *Church of Scientology v Woodward* (1982) 154 CLR 25 at [19].

- (5) *Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:*
- (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and ...*

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant.² That Act defines 'security' as:

- (a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*
- (i) *Espionage*
- (ii) *Sabotage*
- (iii) *Politically motivated violence*
- (iv) *Promotion of communal violence*
- (v) *Attacks on Australia's defence system; or*
- (vi) *Acts of foreign interference;*
- Whether directed from, or committed within, Australia or not; and*
- (aa) *the protection of Australia's territorial and border integrity from serious threats; and*
- (b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

I consider that the disclosure of the information contained within the document that I regard as exempt under s 33(a)(i) could reasonably be expected to cause damage to the security of the Commonwealth by compromising operational functions of the Department of Home Affairs. The document in scope of your request would expose details of the architecture of the VABTC that criminal groups or bad state actors could use to exploit potential vulnerabilities in the VABTC, and the Department's broader ICT environment. As such I have decided that the document is exempt in full from disclosure under section 33(a)(i) of the FOI Act.

International Relations

Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.

² See *Staats and National Archives of Australia* [2010] AATA 531 at [99].

I consider that the release of the information marked 's33(a)(iii)' in the document(s) would, or could reasonably be expected to cause damage to the Australian Government's international relations.

As previously stated, release of the document in scope of your request would expose details of the architecture of the VABTC that criminal groups or bad state actors could use to exploit potential vulnerabilities in the VABTC. I am satisfied that if this were to occur, the document could reveal confidential information relating to 21 other economies (member states). If information that compromised the security of these other states was released, it is highly probable that these states would lose trust in the Australian Government and its agencies. Any such loss of trust could reasonably be expected to result in a reluctance of other countries to share confidential information and or work in partnership with the Australian Government which could reasonably be expected to damage the Australian Government's future ability to form inter-government partnerships on issues such as trade, defence, travel and migration. As such I have decided that the information redacted and marked 's33(a)(iii)' is exempt from disclosure under section 33(a)(iii) 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

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/>.

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@homeaffair.gov.au.

Yours sincerely,

Callan

Position number 60158037

Authorised Decision Maker

Department of Home Affairs