



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/06/01486
File Number ADF2016/27304

Original scope of request

1. On 30 May 2016 you requested:

DIBP's engagement with the Fair Work Ombudsman

- 1. Taskforce Cadena Inter Agency Agreement.*
- 2. Reports generated by, or pertaining to, Taskforce Cadena.*
- 3. All policy and operational agreements between DIBP and the Fair Work Ombudsman (FWO), or between units of either entity.*

We do not request the publicly available Memorandum of Understanding (MoU) between DIBP and DIAC concerning 457 visa holders, dated 2 July, 2013. We do however request:

- a. any subsequent versions of, or revisions to, the 2 July, 2013 MoU;*
- b. all other agreements related to 457-visa holders;*
- c. agreements concerning other categories of temporary visa holders; and*
- d. agreements concerning individuals whose work or presence in Australia contravenes the Migration Act 1958.*

DIBP policy and practice concerning individuals whose work or presence in Australia contravenes the Migration Act 1958

- 4. Documents (including database files) that reflect any statistical data on requests for extension or non-cancellation of an individual's temporary visa, or the granting of a new visa, to enable the individual to remain in Australia to pursue an employment-related civil claim or contribute to a FWO investigation. Data may include the number of such requests per year, visa category, reason for the request and outcomes. This includes requests from any source, including the FWO, non-government organisations, legal representatives, adjudicatory bodies, and individual workers. Such requests may arise, for example, in circumstances in which the individual worked contrary to his or her visa or without a valid visa, or in circumstances in which the individual's visa is likely to expire before his or her claim is resolved.*
- 5. In relation to current and former 7-Eleven workers, all documents related to requests for extension or non-cancellation of the individual's temporary visa, or the granting of a new visa, to enable the individual to remain in Australia to pursue an employment-*

related claim before a court or the Fels Wage Fairness Panel, or to contribute to a FWO investigation. Please provide such documents for the period 1 January 2008 to the present. Please include:

- a. documents related to requests, deliberations and decisions in individual cases, including but not limited to correspondence, case file notes and memoranda; and*
 - b. documents containing aggregated data on the number and outcomes of such requests.*
- 6. All documents related to the provision of a general assurance that DIBP will not cancel individual visas or will grant new visas under certain circumstances to individuals whose employment rights were violated but who may have worked contrary to their visa, such as the recent assurance provided to 7-Eleven employees. Please include all documents related to DIBP's position and deliberations on the issuance of such assurances in in general, and in the 7-Eleven case in particular.*
 - 7. All documents reflecting DIBP policy or practice on the referral to the FWO of non-citizens who are present or working in Australia without authorization in circumstances where the individual may have a claim for unpaid entitlements or other employment-related remedies or may have been a victim of forced labour. In particular, we request any policy or practice that applies regarding referral to FWO in the period between DIBP's apprehension of such a person and his or her removal from Australia, especially where the individual was apprehended at a worksite.*

Orders for restitution against an employer under s 486S Migration Act 1958

- 8. Documents reflecting DIBP's decision-making process and criteria for determining whether to pursue restitution for a debt owed to a worker under s 486S Migration Act 1958.*
- 9. Documents that reflect the number of times that DIBP has sought orders under s486S during the Designated Period and information about those cases in which such orders were sought.*

Revised scope of request

2. Following the Department's provision of a notice under s.24AB of the FOI Act (practical refusal reason), on 19 August 2016 you agreed to the following revised scope for the request:
 1. *Taskforce Cadena Inter Agency Agreement.*
 2. *All policy and operational agreements between DIBP and the Fair Work Ombudsman (FWO), or between units of either entity, concerning individuals whose work or presence in Australia contravenes the Migration Act 1958. We do not request documents relating to activities concerning specific individuals; rather, we are requesting policy and operational agreements reflecting cooperation between DIBP and FWO in relation to this population in general.*
 3. *Documents (including reports that can be generated from database files) that reflect statistical data on requests for extension or non-cancellation of an individual's temporary visa, or the granting of a new visa, to enable the individual to remain in Australia to pursue an employment-related civil claim or contribute to a FWO investigation. Put differently, we are requesting data on instances where in exercise of his/her discretion regarding cancellation of a visa, the Minister's delegate has taken into account a visa-holder's actual or potential claim against their employer (e.g. for unpaid wages) or the visa-holder's ongoing engagement with the FWO. Data may include the number of such requests per year, visa category, reason for the request*

and outcomes. If necessary to protect individual privacy, this may be presented in aggregate form, e.g. for each year: the percentage/number of requests concerning individuals in a particular visa category, the percentage/number of requests for particular outcomes (e.g. grant of bridging visa, extension or non-cancellation of visa etc.), the percentage/number of requests approved or declined, the percentage/number of outcomes granted, the percentage/number of requests by types of requester (e.g. visa holder, FWO, NGOs, adjudicatory body, lawyer, other).

4. *All documents reflecting DIBP policy or practice on the referral to the FWO of non-citizens who are present or working in Australia without authorization in circumstances where the individual may have a claim for unpaid entitlements or other employment-related remedies or may have been a victim of forced labour. In particular, we request any policy or practice that applies regarding referral to FWO in the period between DIBP's apprehension of such a person and his or her removal from Australia, especially where the individual was apprehended at a worksite. This includes copies or a description of the information that is provided to the individual, the manner and timing of its provision, and any activities that DIBP is undertaking regarding development of such information and procedures for its provision.*

Unless otherwise stated, this request relates to the period 1 July 2013 to 31 May 2016 (the "Designated Period").

Documents in scope

3. There are two documents within the scope of your request. These documents are detailed at the Schedule of Documents (Attachment B).

Authority to make decision

4. 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 Departmental records.

Information considered

5. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - The documents as listed in the Schedule of Documents;
 - Consultations with relevant business areas; and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government; and consultations with relevant Departmental business areas.

Decision

6. Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.
7. This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).
8. Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

Part 1 of the request

9. Document 1 is relevant to Part 1 of the request. This document is released in full.

Part 2 of the request

10. Document 2 is relevant to Part 2 of the request. The identifying information and direct contact details for non-Senior Executive Service level staff have been deleted as irrelevant information (s.22(1)(a)(ii)). The intended deletion of such material was advised to you in the acknowledgment letter to your request, issued on 20 June 2016.

11. I note that the MOU to which this document relates is already in the public domain

Part 3 of the request

12. In relation to Part 3 of the request, the Department has undertaken searches to identify any documents that would be relevant. After consulting with relevant business areas I am satisfied that no documents (electronic or hard copy) are in possession of the Department that fall within the scope of this part of your request.

13. Under s.17(1) of the FOI Act, where a discrete document does not exist, the agency is to consider whether a document addressing the request could be produced through the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information.

14. Advice from the relevant business area is that the data sought is not readily producible from systems and would require manual analysis of a large number of individual records to obtain. I therefore consider that production of the data from systems would require an unreasonable diversion of the Department's resources (refer s.17(2)). I am therefore satisfied that this information does not exist in a discrete document/s and access is therefore refused to this part of your request under s.24A(1) of the FOI Act.

Part 4 of the request

15. No documents could be found that fall within the scope of Part 4 of the request. I am therefore satisfied that this information does not exist in a discrete document/s and access is therefore refused to this part of your request under s.24A(1) of the FOI Act.

(signed electronically)


Authorised decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

8 November 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/06/01486
File Number ADF2016/27304

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	15/03/2016	1-6	Taskforce Cadena Joint Agency Agreement	Release in full	n/a
2.	20/05/2015	7-14	Annex to the MOU Between the Department of Immigration and Border Protection and The Fair Work Ombudsman	Irrelevant material deleted	s.22(1)(a)(ii)



Attachment C – Extract of relevant legislation (FOI Act)

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

17 Requests involving use of computers etc.

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and

- (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.