



22 August 2019

Sent by email:

In reply please quote:

FOI Request: FA 18/11/00135

File Number: OBJ2019/15490

Dear

Freedom of Information (FOI) access request – Revised decision under s. 55G of FOI Act

This letter refers to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act), which the Department of Home Affairs (the Department) received on 30 October 2018.

The Department made its original decision on your request on 14 December 2018. On 5 March 2019, the Office of the Australian Information Commissioner (OAIC) advised the Department that you had requested an Information Commissioner review of the Department's access refusal decision.

In response to the Information Commissioner review, the Department has now made a revised decision on your request under section 55G of the FOI Act. The purpose of this letter is to provide you with the Department's revised decision.

1 Scope of request

On 30 October 2018, you requested access to the following documents:

1. *Number of granted Sponsored Family visit (visitor visa subclass 600) in the last 3 years that fall in the following criteria:*
 - a. *Longer than 3 months*
 - b. *Have been granted with finite date as "Stay period" (as shown on the visa grant letter)*
 - i. *How many have applicants requesting multiple entries on their visa application?*
 1. Out of those, how many have been granted multiple entries?
 - c. *How many have been granted with "Stay period" as "xx Months from the date of arrival"?*
 - i. *How many have applicants requesting multiple entries on their visa application?*

1. *Out of those, how many have been granted multiple entries?*
 - d. *How many have their "Stay period" (as shown on the visa grant letter) starting from the date of grant?*
 - e. *How many have been granted with a "Stay period" longer than 12 months?*
 - f. *How many have overstayed their allotted "Stay period" (as shown on the visa grant letter)?*
 - i. *Have had help completing the application*
 - ii. *Top 20 countries of origin?*
 - iii. *Age categories:*
 1. *Under 40*
 2. *Between 40 and 60*
 3. *Over 60*
 - g. *Out of those that overstayed their allotted "Stay period" (as shown on the visa grant letter) how many:*
 - i. *Have been deported?*
 1. *Top 20 countries of origin?*
 2. *Age categories:*
 - a. *Under 40*
 - b. *Between 40 and 60*
 - c. *Over 60*
 - ii. *Have been granted bridging visas?*
 1. *Period of bridging visa grant:*
 - a. *2 weeks*
 - b. *> 2 weeks and 1 month*
 - c. *> 1 month and <= 3 months*
 - d. *> 3 months*
 - iii. *Have been waived 8503 condition?*
 1. *Have been granted another visitor visa after 8503 has been waived?*
 - h. *How many have applied for bridging visa before their visa expired?*
 - i. *Have been granted bridging visas?*
 1. *Period of bridging visa grant:*
 - a. *2 weeks*
 - b. *> 2 weeks and 1 month*
 - c. *> 1 month and <= 3 months*
 - d. *> 3 months*
2. *Total number of granted Sponsored Family visit (visitor visa subclass 600) in the last 3 years?*

On 14 December 2018, the Department made its original decision on the request. The Department decided to refuse your request under section 24A of the FOI Act, on the basis that it considered it had had undertaken reasonable searches to identify documents within the scope of the request and was satisfied that the documents did not exist.

2 Information Commissioner review

On 5 March 2019, the OAIC advised the Department that you had requested the Information Commissioner review the Department's decision. In making your review request to the OAIC, you stated:

The department declined my FIO [sic] request and kept referring to documents when I actually requested statistical information which should be available by doing database query on their information system(s). The department publishes some statistics which in this case are not complete to gain sufficient insight into a particular area of visitors visa process I suspect has a problem affecting numerous travelers through no fault of their own. I believe the department is trying to hide the extent of the issue by denying me the access to requested information.

3 Revocation or variation of access refusal decision

Section 55G of the FOI Act provides for the revocation or variation of an access refusal decision during a review by the Information Commissioner:

55G Procedure in IC review—revocation or variation of access refusal decision

- (1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original** decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised** decision) would have an effect of:*
- (a) giving access to a document in accordance with the request; or*
 - (b) relieving the IC review applicant from liability to pay a charge; or*
 - (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 26AA (documents affecting Norfolk Island intergovernmental relations), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*

(b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

The Department has now made a revised decision under section 55G(1)(a).

4 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 documents or to amend or annotate records.

5 Revised decision on request

The Department has decided:

- that, as is provided for under section 17 of the FOI Act, it is able to produce two documents from its computer systems containing information relevant to the following parts of your request:
 - Document A – corresponding to parts 1(a), 1(b), 1(b)(1), 1(c), 1(c)(i)(1), 1(e), 1(f), 1(h)(i)(a-d) and 2 of your request
 - Document B – corresponding with parts 1(g) and 1(g)(i) of your request
- to release those two documents in full
- to refuse parts 1(b)(i), 1(c)(i), 1(d), 1(f), 1(g)(ii) and 1(g)(iii) of your request under section 24A(1) of the FOI Act.

I have provided the reasons for my decision in paragraph 6 below.

6 Reasons for decision: refusal of access to documents that do not exist

Section 24A(1)(b)(ii) 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 documents do not exist.

6.1 Searches for documents

The Department considers that the information you have requested is of a nature that no discrete document exists within the scope of the request. Any documents relevant to the request would be generated from data contained on the Department's computer systems, as is provided for under section 17 of the FOI Act.

Accordingly, the searches conducted by the Department involved contact with two relevant business areas – Immigration and Visa Statistics Section and Immigration Integrity and Goods Statistics Section – reviewing available data on the Department's computer systems to investigate whether a document or documents containing the information could be produced.

The relevant business areas advised as follows:

- The Department does not hold data to indicate whether applicants for sponsored family visitor stream visas have applied for single or multiple entries. Consequently it is not possible to generate a document containing the information requested by you under point **1(b)(i) and 1(c)(i)** of your request.

- While the Department does hold data indicating the length of the stay period for holders of sponsored family visitor stream visas, that data does not indicate whether the stay period is specified from the date of grant instead of the date of entry. Consequently it is not possible to generate a document containing the information requested by you under point **1(d)** of your request.
- The Department does hold data on the number of 'unauthorised non citizens' (UNC); however the data does not capture the stream of the visa that was previously held by the clients in question which would enable the identification of clients who have overstayed sponsored family visitor stream visas. In addition, the Department records UNC data as a 'point in time' data set on 30 June each year rather than calculating the data cumulatively over a time period. Consequently it is not possible to generate a document containing the information requested by you under point **1(f)** (and sub-points) of your request.
- The Department does not record the bridging visa status or 8503 waiver application status of UNC clients that would enable a document to be generated containing the information requested by you under points **1(g)(ii) and 1(g)(iii)** (and sub-points) of your request.

6.2 Decision on documents

Having considered the searches outlined above, I am satisfied that the Department has undertaken reasonable searches in relation to your request and that no discrete documents corresponding with 1(b)(i), 1(c)(i), 1(d), 1(f), 1(g)(ii) and 1(g)(iii) of your request were in the possession of the Department on 30 October 2018 when it received your request.

I am also satisfied that it is not possible for the Department to use its computer systems to generate documents containing the information you have requested.

I have therefore refused these parts of your request under 24A(1)(b)(ii) of the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 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.

9 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at

**Authorised Decision Maker
Department of Home Affairs**