



5 September 2019

Sent by email to: [REDACTED]

In reply, please quote:

FOI Request: FA 19/03/00395
File Number: ADF2019/174452

Dear [REDACTED]

Freedom of Information (FOI) – Decision on internal review

I refer to your correspondence received by the Department of Home Affairs (the Department) on 8 June 2019, in which you requested an internal review of a decision made by the Department under the *Freedom of Information Act 1982* (FOI Act).

You requested that the Department review its decision of 7 June 2019 to partially refuse access to documents to which you had requested access on 6 March 2019.

1 Scope of original request

On 6 March 2019, you requested access to the following documents under the FOI Act:

STANDARD BUSINESS SPONSORSHIP APPLICATIONS

1. ***“Business/Organisation details”***. All names of all entities, who are not individuals/sole traders, that are currently approved as subclass 457 or 482 standard business sponsors, as listed in their Sponsorship applications:

- (i) legal name; and
- (ii) all trading names

in separate columns.

2. ***Business website / URL listed*** in latest Sponsorship application for the entities in (1) above.

3. ***Addresses listed*** in latest Sponsorship application for the entities in (1) above:

- a. *Head office address (ie street address/suburb/state/postcode)*
- b. *Postal address (ie street address/suburb/state/postcode)*

4. **Grant dates for all standard business sponsorships** listed in (1) above
5. Indication of which sponsorships listed in (1) above are **accredited sponsorships**.
6. **“Industry details”**: industry type listed for each of the entities in (1) above

NOMINATION APPLICATIONS

7. **Grant dates of all 457 and 482 Nominations** granted since 1 January 2015 to date, for each of the entities in (1) above, whether under their current or prior 457 or 482 sponsorships [ie list each Nomination, not an aggregate]
8. **Stream**. Indication of whether nominations listed in (7) above were granted in the Short-Term Stream, the Medium-Term Stream, or other.
9. **“Business contact details”** listed in each Nomination application granted in (7) above:
 - a. “Position in business” of business contact
 - b. “Email address”
 - c. “Postal address” (ie street address/suburb/state/postcode)
10. **“Location of the Nominated Position” details** listed in each Nomination application granted in (7) above:
 - a. “Business name at this location”
 - b. “Business web site / URL” for this location
 - c. All address details (ie street address/suburb/state/postcode)
 - d. “Position in business” of business contact at this location
 - e. “Email address”

2 Original Decision on access dated 7 June 2019

The Department was not in possession of any existing documents containing the full range of data falling within the scope of your request. Therefore, FOI conducted reasonable enquiries with relevant departmental business areas in attempt to locate the full range of requested data.

Under section 17(1)(c) of the FOI Act, the Department’s Data Division extracted, via its ordinarily available reporting functions, the information requested in parts 1, 2, 3a, 3b, 5, 6, 8, 10a, 10b and 10c of your request – and created one discrete document displaying this information.

I am satisfied that the information displayed in this document was in the possession of the Department on 6 March 2019, when your FOI request was received.

The Department’s original decision in relation to this document was to exempt it in part under s 22(1)(a)(ii) of the FOI Act, on the basis that some information within the document (departmental reference numbers) would reasonably be considered irrelevant to your request.

The Department also decided to refuse access to the information requested in parts 9a, 9b, 9c, 10d and 10e of your request under s 24A(1)(b)(i) of the FOI Act, which provides that a request for access to a document may be refused if all reasonable steps have been taken to find the document and the agency is satisfied that the document does not exist.

3 Request for Internal Review

On 8 June 2019, you requested that the Department conduct a review of its original decision dated 7 June 2019. Your request for internal review was as follows:

"I refer to the following FOI Request, made on 6 March 2019:

*FA 19/03/00395
File Number: OBJ2019/17005*

I note my request was only partially fulfilled three months later on 7 June 2019, with omissions that I have divided into 2 categories:

- 1. omissions without explanation*
- 2. omissions with explanation*

These are discussed in greater detail below

1. Omissions Without Explanation

The following part of my request has been completely omitted, without explanation:

- 4. Grant dates for all standard business sponsorships*

The following parts of my request have been partially omitted, without explanation:

- 10. "Location of the Nominated Position" details listed in each Nomination application granted in (7) above:
 - a. "Business name at this location"*
 - b. "Business web site / URL" for this location*
 - c. All address details (i.e. street address/suburb/state/postcode)**

For example, the 10(a), (b) and (c) details are missing from some of Part 7 of the documents released; most of Part 4 of the documents released; and all of Parts 5 & 6 of the documents released.

2. Omissions With Explanation

Other parts of my request have been completely omitted, with the following explanations:

- 9. "Business contact details" listed in each Nomination application granted in (7) above:
 - a. "Position in business" of business contact*
- Not available in the data available for reporting.
 - b. "Email address"*
- Not available in the data available for reporting.
 - c. "Postal address" (i.e. street address/suburb/state/postcode)*
*- Not available in the data available for reporting.**

10. "Location of the Nominated Position" details listed in each Nomination application granted in (7) above:
- d. "Position in business" of business contact at this location
 - Not available in the data available for reporting.
 - e. "Email address"
 - Not available in the data available for reporting.

Your letter further explains these omissions, relying on s24A of the FOI Act in relation to documents which do not exist:

that the Department has undertaken reasonable searches in relation to those parts of your request and that no documents were in the possession of the Department on 6 March 2019 when your FOI request was received.

As you are no doubt aware, a "document" is defined in s4 of the FOI Act as including:

(a) any of, or any part of any of, the following things:

...

(iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

(v) any article on which information has been stored or recorded, either mechanically or electronically;

(vi) any other record of information; or

(b) any copy, reproduction or duplicate of such a thing; or

(c) any part of such a copy, reproduction or duplicate;

In this context, I note that my request was not fishing for documents that may or may not exist or may or may not be available, rather it was based word-for-word (note the quotation marks in the request) on compulsory data fields created by the Department in application forms appearing in Immiaccount in order to capture that exact same data (I can provide screenshots of those fields if you are in any doubt) for use by the Department.

In other words, the "documents" not only exist, but have been (and continue to be) routinely collected, retrieved and used by the Department as part of the 457/TSS application and monitoring process. To profess that the "documents" do not exist or cannot be found is demonstrably inaccurate, when it is (or should be) abundantly clear to all parties that they do indeed exist, are available and are in fact used by the Department on a daily basis. Yet the Decision would have one believe that, as the Department continues its daily collection, retrieval and use of this information for its own ends, "reasonable searches" have not managed to unearth a single record in respect of this aspect of my request.

Summary

Having regard to the matters set out above, please provide a revised copy of the release documents, updated with the omitted information.

As originally noted in my request, when I have encountered obfuscation (intentional or otherwise) in prior FOI requests, enforcing compliance - which I have secured without fail - has unnecessarily incurred a waste of my time and resources, those of the Information Commissioner and, to its discredit, those of the Department itself.

It would be far preferable to work together with the Department in good faith, in order to fulfil the objects of the FOI Act, which is to say the law.

Given three months have passed since my original request, I would be grateful if you could give this your earliest attention.”

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 departmental records.

In accordance with section 54C(3) of the FOI Act, I have made a fresh decision on your FOI request.

5 Information considered

In reaching my decision on your request, I have considered the following:

- the scope of your request
- the Department’s original decision dated 7 July 2019, and the evidence gathered for that decision
- your submissions in relation to your reasons for requesting an internal review
- the document falling within the scope of your request
- advice from departmental officers with responsibility for matters relating to the information to which you sought access
- the FOI Act, and
- the Australian Information Commissioner’s guidelines relating to the interpretation, operation and administration of the FOI Act (the FOI guidelines).

6 Internal review decision

As part of the internal review process, the Department conducted additional reasonable searches in attempt to locate the full range of data you contend was not provided to you with the original decision.

In relation to part 4 of your request, Data Division advised:

“Standard business sponsorships do not have grant dates. Only visa applications are granted and have a grant date whereas sponsorships are approved and have an approval date. The approval date can be provided if required.”

In accordance with the above advice, FOI requested the standard business sponsorship approval dates. On 6 August 2019, Data Division provided FOI with an

updated document containing these dates. The updated document contains the information requested at parts 1, 2, 3a, 3b, 4, 5, 6, 8, 10a, 10b and 10c of your request, and is being released to you with this decision.

I have decided to release an edited version of this document under s 22(1)(a)(ii) of the FOI Act on the basis that I consider that some information within the document (departmental reference numbers) would reasonably be regarded as irrelevant to your request for access.

My decision in relation to parts 10a, 10b and 10c of your request is to refuse access to this information for the period dating 1 January 2015 to 1 July 2017 (inclusive) under s 24A(1)(b)(ii) of the FOI Act, on the basis that I am satisfied that this information was not collected (and therefore did not exist) prior to 1 July 2017.

My decision in relation to parts 9a, 9b, 9c, 10d and 10e of your request is to refuse access to this information under s 24A(1)(b)(ii) of the FOI Act on the basis that I am satisfied that compliance with section 17(1) of the FOI Act would substantially and unreasonably divert the resources of the Department from its other operations.

7 Reasons for internal review decision

My findings of fact and reasons for my decision are explained in paragraphs 7.1 and 7.2 below.

7.1 Reasons for internal review decision:

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

In summary, section 22 of the FOI Act provides that an agency must give access to an edited copy of a document (and provide the grounds for the deletions that have been made) when:

- the agency has identified that a document contains exempt material or information that would reasonably be regarded as irrelevant to the request; and
- it is reasonably practicable for the agency to prepare an edited copy of the document (modified by deletions), ensuring that the edited copy would not disclose the exempt material or information that would reasonably be regarded as irrelevant.

I consider that the updated document provided by Data Division contains information that would reasonably be regarded as irrelevant to your request.

Specifically, I consider that departmental reference numbers appearing within the document (Sponsorship Case Identity numbers and Sponsor Client Identity numbers) are irrelevant because you did not request access to this information.

I consider that it is reasonably practicable for the Department to prepare an edited copy of the document, and I have therefore prepared an edited copy with the departmental reference numbers only deleted pursuant to s 22(1)(a)(ii).

7.2 Reasons for internal review decision:

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

Section 24A of the FOI Act provides that:

- (1) an agency 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 is satisfied that the document:
 - (i) is in its possession but cannot be found, or
 - (ii) does not exist.

Parts 10a, 10b and 10c

You contend that parts 10a, 10b and 10c of your request were partially omitted from the Department's original decision without explanation, and you provided the following examples:

“For example, the 10(a), (b) and (c) details are missing from some of Part 7 of the documents released; most of Part 4 of the documents released; and all of Parts 5 & 6 of the documents released.”

As part of the internal review process, FOI enquired with the relevant departmental Program area in relation to your contentions above. On 28 August 2019, the Skilled and Family Visa Program Branch confirmed that they have only been collecting workplace location data for subclasses 457 and 482 since 1 July 2017. The empty fields appearing in most of Document 4 and all of Documents 5 and 6 are therefore accounted for, as these fields pertain to Standard Business Sponsorships approved between 2 January 2015 and 30 May 2017.

Document 7 pertains to Standard Business Sponsorships approved between 30 May 2017 and 20 April 2019. For these Standard Business Sponsorships, the Skilled and Family Visa Program Branch confirmed that an absence of workplace location data from 1 July 2017 onwards indicates that the nomination was lodged before 1 July 2017 and approved sometime after that. A big gap in time may indicate that the nomination was initially refused and then subsequently approved after an AAT review (a process which can take over 12 months).

On the basis of the above advice, I am satisfied that the data requested in parts 10a, 10b and 10c of your request did not exist prior to 1 July 2017. I therefore refuse access to this data for the period dating 1 January 2015 to 1 July 2017 inclusive under s 24A(1)(b)(ii) of the FOI Act.

Parts 9a, 9b, 9c, 10d and 10e

In summary, section 17(1) of the FOI Act provides that where an agency could produce a written document containing the requested information in discrete form by the use of a computer or other equipment ordinarily available for retrieving or collating stored information, the FOI Act applies as if it the agency had such a document in its possession.

Section 17(2) of the FOI Act further provides that an agency is not required to comply with section 17(1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The Department's original decision was to refuse access to parts 9a, 9b, 9c, 10d and 10e of your request under s 24A(1)(b)(ii) of the FOI Act on the basis that the Department undertook reasonable searches in relation to those parts of your request and was satisfied that no documents were in the possession of the Department when your FOI request was received.

In relation to that decision, you contend the following:

*"As you are no doubt aware, a "document" is defined in s 4 of the FOI Act as:
(a) Any of, or any part of, the following things:*

...

(iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device

(v) any article on which information has been stored or recorded either mechanically or electronically

(vi) any other record of information, or

(b) Any copy, reproduction or duplicate of such a thing; or

(c) Any part of such a copy, reproduction or duplicate;

In this context, I note that my request was not fishing for documents that may or may not exist or may or may not be available, rather it was based word-for-word (as per the quotation marks in my request), compulsory data fields created by the Department in application forms appearing in Immiaccount in order to capture that exact same data (I can provide screenshots of those fields if you are in any doubt) for use by the Department.

*In other words, the "documents" not only exist, but have been (and continue to be) routinely collected, retrieved and used by the Department as part of the 457/TSS application and monitoring process. To profess that the "documents" do not exist or cannot be found is demonstrably inaccurate, when it is (or should be) abundantly clear to all parties that they do indeed exist, are available and are in fact **used by the Department on a daily basis**. Yet the Decision would have one believe that, as the Department continues its daily collection, retrieval and use of this information for its own ends, "reasonable searches" have not managed to unearth a single record in respect of this aspect of my request."*

As part of the internal review process, FOI enquired with the Department's Data and Information and Communications Technology (ICT) Divisions, in relation to your above assertions.

On 6 August 2019, Data Division re-confirmed that they cannot produce a written document displaying the requested data items in discrete form, for the following reasons:

- The Department's ICSE (Integrated Client Services Environment) system is the processing system for 457 and 482 sponsorships and nominations
- Data from ICSE is copied to the Department's data warehouse and used for Data Division's processing

- Although the five data items are entered by clients into their ImmiAccounts (and subsequently captured by within certain departmental systems), these data items are not transferred to the Nomination Permission Request in ICSE
- Subsequently, Data Division do not have access to the information and cannot include it in their reports.

On 29 August 2019, ICT Division provided the following clarifying information in relation to the specific departmental systems that capture and store the requested data items:

- 9a. *“Position in business” of business contact* - Not stored in ICSE but is captured in the PDF of the application generated from the ImmiAccount and stored in TRIM
- 9b. *“Email address”* – Stored in ICSE under Authorised Contact details
- 9c. *“Postal address (i.e. street address/suburb/state/postcode)”* – Stored in ICSE under Authorised Contact details
- 10d. *“Position in business” of business contact at this location* – Not stored in ICSE but is captured in the PDF of the application generated from the ImmiAccount and stored in TRIM
- 10e. *“Email address”* - Not stored in ICSE but is captured in the PDF of the application automatically generated from the ImmiAccount and stored in TRIM.

On 30 August 2019, ICT Division further advised that producing a written document displaying the requested data items in discrete form would substantially and unreasonably divert the resources of their Division from its other operations, for the following reasons:

- The information that is populated into the PDFs but not sent to ICSE is stored within the Department’s E Commerce Database (ECOM). ECOM supports the operation of the Department’s digital forms by capturing and storing data sets. The largest challenge for ICT in providing this information is the lack of application finalisation data within ECOM. Once the application is manually raised by a case officer in ICSE, ECOM does not receive any further updates. ECOM is unable to differentiate between a lodged nomination application and an approved nomination. A significant amount of resource effort would be required for ICT to extract the information from ECOM in order to be able to differentiate between lodged and approved nominations, and potentially would also require the building of PL/SQL and/or java queries through ECOM to extract.
- Extracting the information from ECOM and ICSE for 457 and 482 Nominations since January 2015 would be approximately 275,000 applications (as at end June 2019).
- Assuming that the information listed at parts 10d and 10e was only collected from 1 July 2017 onwards (in line with the information listed at parts 10a, 10b and 10c), extracting the information from ECOM and ICSE for 457 and 482 Nominations since 1 July 2017 would be approximately 110,000 applications

(as at end June 2019). Reduced count does not reduce effort to collate the data as addressed by the next point.

- The resource effort required would be approximately five full days across the following APS/Contractor resources: 2@APS6, 1@EL1, and 1@ICSE Development Contractor (EL2 equivalent), noting that it has cross team and branch complexity. This is the equivalent of 150 hours work.
- Enacting the above would require ICT Division to redirect away from current, critical ICT infrastructural priorities.

Section 17(2) of the FOI Act provides that an agency is not required to comply with section 17(1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

Based on the advice provided by the Data and ICT Divisions, I am satisfied that the requested information exists in discrete form, comprising of approximately 275,000 PDFs for parts 9a, 9b and 9c and approximately 110,000 PDFs for parts 10d and 10e. However, I am satisfied the effort required for the ICT Division to extract the requested information into a discrete document (approximately 150 hours work) would substantially and unreasonably divert the resources of the ICT Division from its other operations. I am therefore satisfied that s 17(2) is met and the Department is not required to provide the information in discrete form.

For this reason, I refuse access to the requested data items under s 24A(1)(b)(ii) of the FOI Act.

8 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.

9 Your Review Rights

Review by the Office of the Australian Information Commissioner (OAIC)

If you are not satisfied with my internal review decision, you may apply directly to the OAIC for an external review of my decision. You must apply in writing within 60 days following receipt of this notice. For comprehensive information about your review rights, including how to submit a request for OAIC review, please see *FOI fact sheet 12: Your review rights*, available online at: <https://www.oaic.gov.au/freedom-of-information/foi-resources/foi-fact-sheets/foi-factsheet-12-your-review-rights> .

10 How to make a complaint about the handling of your FOI request

You may complain to the OAIC if you have concerns about how the Department has handled your request. There is no particular form required to make a complaint to the OAIC. Requests should be in writing, should identify the Department as the

relevant agency, and provide the grounds on which it is considered that the Department's actions should be investigated.

More information about how to submit a complaint is available at: www.oaic.gov.au

Enquiries to the OAIC can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

11 Contact

The FOI Reviews Team can be contacted by email at:

foi.reviews@homeaffairs.gov.au

(Signed electronically)



Position Number 60007879
Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982***

FOI request: FA 19/03/00395
File Number: ADF2019/174452

No.	Date of document	No. of pages	Description	Decision on release	
1	6/08/2019	178	Standard Business Sponsorship application data	Exempt in part (irrelevant material)	s 22(1)(a)(ii)
2	6/08/2019	2334	Nomination application data	Released in full	N/A