



19 August 2019

In reply please quote:

FOI Request: FA 19/05/01692
File Number: ADF2019/32840

Freedom of Information (FOI) request - Access Decision

On 27 May 2019, 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. The number of people currently in immigration detention in Australia with Adverse Security Assessments issued by ASIO;*
- 2. 2010 to date, the number of people who were granted visas, of any kind, from immigration detention, and who had Adverse Security Assessments issued by ASIO at the time of the grant;*
- 3. 2010 to date, the number of people who were granted visas, of any kind, from immigration detention, and who had Adverse Security Assessments issued by ASIO at the time of the grant, and such grant resulted from the Minister exercising his non-reviewable and non-compellable powers under sections 195A, 197AB, 351, 417 and 501J of the Migration Act or any other similar section;*
- 4. Any formal or informal Departmental guidance relating to the referral of people in detention with Adverse Security Assessments issued by ASIO to for Ministerial Intervention, including but not limited to section 195A, 197AB, 351, 417 & 501J of the Migration Act.*

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

Section 17 of the FOI Act provides that where the Department is able to produce a written document containing the information in a discrete form using a computer system, it should treat the request

In relation to part 1 to 3 of your request, the Department has used its computer system to produce one document that contains information that falls within the scope of your request, in accordance with section 17 of the FOI Act. The data produced in the document existed in the possession of the Department on 27 May 2019 when your FOI request was received.

In relation to part 4 of your request the Department has conducted reasonable searches in relation to 'informal Departmental guidance'. The Department does not hold an existing discrete document that addresses this part of your request.

The Department has considered whether it can extract the data relevant to this part of your request 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 agency 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 (section 17(2))

I am satisfied that it is not possible to extract the information you are seeking without significant manual review of a large number of emails dating back to 2010. I am satisfied that the work required would substantially and unreasonably divert the resources of the Department from its other operations and as such, section 17(2) of the FOI Act does not require a document to be produced.

In relation to 'formal Departmental guidance', the Department has identified one document which falls within the scope of your request. The Departmental instruction is titled *The Ministerial guidelines on ministerial powers (s345, s351, s417 and s501J) Procedure Advice Manual* is publicly available on LEGENDcom.

LEGENDcom is an electronic database of migration and citizenship legislation and policy documents and is available to members of the public on a subscription basis. See: <http://www.border.gov.au/Trav/Visa/LEGE>

Section 12(1)(c) of the FOI Act provides that a person is not entitled to obtain access to a document for which the agency has made available for purchase by the public.

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:

- Release one document in full

5 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.

6 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 Fact Sheet 12 "Freedom of information – Your review rights", available online at <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

7 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.

8 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.



**Authorised Decision Maker
Department of Home Affairs**