



2 December 2019

[Redacted]

In reply please quote:

[Redacted]

[Redacted]

### Freedom of Information (FOI) request - Access Decision

On 30 October 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:

*The Department's internal register of gifts and hospitality to department officers, covering items and invitations accepted or declined, for the 2018 calendar year and for 2019 to date [30 Oct 2019].*

#### 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)

#### 4 Document in scope of request

The Department has undertaken reasonable searches in relation to the documents you have requested access to.

Prior to 1 September 2019, the Department did not maintain a central register for recording gifts/hospitality. The records were retained individually by the officials of the Department who accepted the gift or benefit, in accordance with the Department's record keeping policy.

From 1 September 2019, all staff are required to formally declare and report centrally any gifts or benefits received in the course of their employment.

The Department has considered whether it can extract the data that you have requested in its entirety 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 (s17(2))

In *Collection Point Pty Ltd v Commissioner of Taxation* the Full Federal Court held that the two conditions specified above are distinct and to be applied sequentially. That is, a computer may not be ordinarily available to an agency even though it could be obtained without an unreasonable diversion of agency resources; and, conversely, an agency may encounter an unreasonable diversion of resources to produce a written document using a computer that is ordinarily available.

The Department has extracted data from its computer systems that is relevant to part of your request, being for the timeframe from 1 September 2019 to 31 October 2019. This data was in possession of the Department on 30 October 2019 when your request was received.

I am satisfied that in relation to the remainder of your request, the Department is not able to extract this data under section 17(1) of the FOI Act. I am also satisfied that the Department would be required to retrieve this information from individual officers throughout the Department, which would result in a significant diversion of resources. In order to satisfy this part of your request, every staff member in the Department would be required to undertake a search for relevant documents. The Department, including the ABF, has in excess of 14,055 staff across 114 locations around the world<sup>1</sup>. It is not reasonably practicable for the Department to contact every staff member to ascertain whether documents relevant to your request are held by the Department.

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<sup>1</sup> <https://www.homeaffairs.gov.au/reports-and-pubs/Annualreports/home-affairs-annual-report-2018-19.pdf> [24]

## 5 Decision

Section 24A 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 document does not exist.

I am satisfied that no documents were in the possession of the Department prior to 1 September 2019. As such I am refusing access to the documents requested by you in part based on the application of section 24A of the FOI Act.

The decision in relation to the document in the possession of the Department which does fall within the scope of your request is to release one document in full.

## 6 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.

## 7 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](mailto: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>.

## **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](mailto: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 [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).



**Authorised Decision Maker  
Department of Home Affairs**