



22 March 2019

In reply please quote:

FOI Request: FA 18/11/01574
File Number: ADF2018/237068

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 28 November 2018, the Department of Home Affairs (the Department) received a request for access to documents 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 documents:

1. *A table of entities which have signed a labour agreement with the Department between the dates of 1 January 2016 and 28 November 2018, detailing the kind of labour agreement, the start and end dates of the labour agreement, and the classifications that the labour agreement covers.*
2. *A table of entities which have had applications for proposed labour agreements rejected by the Department between the dates of 1 January 2016 and 28 November 2018, detailing the kind of proposed labour agreement, the classifications that the proposed labour agreement purported to cover, and the reason(s) why the application was rejected by the Department.*
3. *A table that displays the number of labour agreements approved by the Department and the number of proposed labour agreements rejected by the Department for each calendar year of 2015, 2016, 2017, and 2018 (to date), split into labour agreement type.*

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 documents 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 documents to which you sought access

4 Documents in scope of request

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce one document that contains information that falls within the scope of Part 2 of your request. The data produced in the documents existed in the possession of the Department on 28 November 2018 when your FOI request was received.

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

Searches

In relation to each part of your request, the Department does not hold an existing discrete document that contains the data you are seeking.

The Department has considered whether it can extract the data 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.

In relation to Part 1 of your request, the information you have requested in this part of your request is, for the most part, available on the Department's website at:

<https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-agreements/list-of-current-labour-agreements#>

In relation to the latter part of this part of your request, specifically the information regarding '*classifications that the labour agreement covers*', the Department is not able to extract the information you have sought access to from its computer systems as the data relating to classifications under each Labour Agreement is not readily available. The Department would be required to divert significant resources from its current operations in order to manually retrieve and collate the information requested. I am satisfied that the work required to process the request would substantially and unreasonably divert the resources

of the Department from its other operations, and as such, the Department is not required to extract this data under section 17(1) of the FOI Act.

Part 2

The Department has produced the data available to it, being the data for 2018. It is not able to extract data for previous years, and as such, the Department is not required to extract this data under section 17(1) of the FOI Act.

Part 3

The information that the Department does hold in relation to this part of your request is contained in the document produced, or on the Department's website. The Department does not hold any additional information that would be relevant to this part of the request.

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 the Department has produced the data relevant to your request, to the extent that it is able to do so. So far as it is unable to extract the data requested, I am refusing access to that information requested by you 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 falls within the scope of your request is as follows:

- Release one document in part with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

6.1 Section 47G of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I have considered that part of documents marked 47G(1)(a) contains information concerning the business, commercial or financial affairs of an organization.

The information is in the nature of third party organisation names that have been refused a Labour Agreement.

In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:

- (a) The extent to which the information is well known;

- (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Department considers relevant.

The information contained within these documents is not in the public domain, the organisation concerned is not generally known to be associated with the matters referred to in these documents, and the information is not available from publicly accessible sources, such as the organisation's website. I am therefore satisfied that the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

I have decided that parts of the documents referred to above are conditionally exempt under section 47G of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

6.2 The public interest – section 11A of the FOI Act

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does not seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the documents.

- I am satisfied that you do not require access to the documents in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the lawful business, commercial or financial affairs of an organisation. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- b) access to the document could result in any person misinterpreting or misunderstanding the document;
- c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- d) access to the document could result in confusion or unnecessary debate.

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under 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 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 [http://www.oaic.gov.au/freedom of information/foi reviews](http://www.oaic.gov.au/freedom%20of%20information/foi%20reviews).

9 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.

10 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**