



15 March 2019

**In reply please quote:**

FOI Request: FA 19/01/00060  
File Number: ADF2019/1925

Dear [REDACTED]

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

On 20 December 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:

*Documents showing some or all of the following numbers or statistics, for years 2015-2016, 2016-2017, 2017-2018, 2018-2019 for each power within the sections ss501, 501A, 501B, 501BA, 501C, 501CA, 501D, 501E, 501F, 501G, 501H, 501HA, 501J, and s116:*

- 1) Number of Refusals and Cancellations.*
- 2) Number of Refusals and Cancellations for minors and adults.*
- 3) Number of delegate decisions and personal Ministerial decisions.*
- 4) Number of set aside or remittal decisions from tribunals and courts.*
- 5) Minimum, average and maximum days (eg timeframe) for cases at VACCU/NCCC prior to cancellation or refusal decision being made*
- 6) Minimum, average and maximum days (eg timeframe) for cases at VACCU/NCCC prior to referral to the Minister for decision, and the minimum, average and maximum days for the Minister to respond with a decision or no decision.*
- 7) Number of decisions by each Minister and number by each Assistance Minister.*

**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 documents relevant to the 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 three documents that contain information that falls within the scope of your request. The data produced in the documents existed in the possession of the Department on 20 December 2018 when your FOI request was received.

### **5 Decision**

The decision in relation to the documents which may fall within the scope of your request is as follows:

- In relation to point 1-4 of your FOI request, I have decided to release three document in full.
- In relation to point 5-7 of your FOI request, I have decided to refuse access to the documents on the basis that the documents do not exist.

Detailed reasons for my decision are set out below:

### **6 Reasons for 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.

In relation to point 5 of your FOI request, there is no existing discrete document that contains the data you are seeking. The Department has considered whether we can extract the data in accordance with the section 17 of the FOI Act. The obligation to produce a written document under this section 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.

Producing a written document containing the information you are requesting under point 5 would substantially and unreasonably divert the agency's resources from its operations thus I am satisfied that the Department is not obliged to create a document to meet your request. I am therefore refusing access under s24A of the FOI Act on the ground that the document does not exist.

In relation to points 6 and 7 of your FOI request, I have consulted with the relevant business area and have been advised that information being sought is not retained in a database maintained by the Department. Having considered this response, I am satisfied that the Department has undertaken reasonable searches in relation to your request and that no document in relation to points 6 and 7 of your FOI request was in the possession of the Department on 20 December 2018 when your FOI request was received. As such I am refusing access to the document requested by you based on the application of section 24A 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 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 <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## **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](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.

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



**Authorised Decision Maker  
Department of Home Affairs**