

FOI

From: s. 47F(1)
Sent: Tuesday, 23 October 2018 2:28 PM
To: FOI
Subject: RE: Freedom of Information request - FOI Disclosure log [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Completed

Dear FOI,

Thank you for telling me that the Department of Home Affairs has accepted my FOI request as a complaint in relation to the status of the publication of documents subject to the disclosure log. Why the Dept arrived at its decision is not explained.

The FOI request sought a document that contains the reason or reasons why the release of documents by the Dept on the 29 August 2018 was not reflected in the disclosure log. The content of the documents released on 28 Aug – and published on the RTK website – indicated that the documents met the criteria for inclusion in the log. Hence the FOI request.

Based on the updated disclosure log, the Department has been a serial offender – on about 30 occasions - in not complying with its obligations under the FOI legislation. One may ponder, was the offending due to (a) a Cormann scenario i.e. an administrative error or (b) a Pezzullo scenario i.e. a stab at the heart of public administration.

The Department cannot decide to ignore FOI obligations merely by accepting the FOI request as a complaint.

Yours sincerely,

s. 47

-----Original Message-----

UNCLASSIFIED

Dear s. 47F(1)

Thank you for your email and your feedback.

The Department has accepted your correspondence as a complaint in relation to the status of the publication of documents subject to the disclosure log.

The Department is working on uploading a number of documents in accordance with the FOI Act and the request that you specifically reference below is awaiting publication.

The FOI Section will work with relevant stakeholders to ensure that documents subject to publication are uploaded.

Kind Regards

FOI Officer

Freedom of Information (FOI) Section | FOI and Records Management Branch Productivity and Compliance Division
| Corporate and Enabling Group Department of Home Affairs

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under the Freedom of Information Act 1982

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Please use this email address for all replies to this request:

s. 47F(1)
[REDACTED]

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FOI

From: s. 47F(1)
Sent: Monday, 29 October 2018 11:51 AM
To: FOI
Subject: Re: Decision Record letter - FA 18/10/01368 [SEC=UNCLASSIFIED]

Dear FOI,

Agencies and ministers must publish information that has been released in response to each FOI access request, subject to certain exceptions. Agencies and ministers must publish this information within ten working days of giving the FOI applicant access to the information. The requirement to publish in a disclosure log information that was released to an FOI applicant does not apply to information of three kinds if publication would be 'unreasonable': personal information, information about a business, or information covered by the Information Commissioner's Disclosure Log Determination No. 2013-1 (Exempt Documents).

Given the content of the FOI responses and update of the disclosure log one could speculate that the FOI request prompted the Dept to comply with its FOI obligations in relation to the disclosure log, obligations it had failed to meet from June 2018.

As for the FOI decision, OIC Guidelines Part 2 para 2.34 may be relevant

:

2.34 The right of access applies to documents that exist at the time the FOI request was made. An applicant cannot insist that their request cover documents created after the request is received. However, the agency or minister could consider whether to include documents that were created after the request was received. This could be more administratively efficient because the applicant might otherwise submit a new request for the later documents.

s. 22(1)(a)(ii)

s. 47

s. 22(1)(a)(ii)

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FOI

From: s. 47F(1)
Sent: Tuesday, 3 December 2019 4:30 PM
To: FOI
Subject: Freedom of Information request - Dept of Home Affairs - Non Compliance with FOI legislation Disclosure Log

Dear Department of Home Affairs,

The FOI Act requires agencies to publish information in a disclosure log within 10 working days after the freedom of information (FOI) applicant was 'given access' to a document. The public expect that Commonwealth Agencies will respect and comply with Commonwealth Law.

The Department of Home Affairs updates its disclosure log every few months resulting in many entries being outside the 10-working day limit set out in the FOI legislation. Non-compliance appears to be built into the system. For example, each of the 37 new entries published in the log on or about 18 October (i.e. entries with date of access from 23 August 2019 (FA19/05/01692) to 24 Sept 2019 (FA 10/07/01089) were published outside the 10-day requirements of the FOI legislation.

That is the Department did not comply with the law on 37 occasions. Once documents are uploaded to the disclosure log one cannot discern that the Department has failed to comply with the 10- day publishing requirement. The publication of required information in the disclosure log without acknowledgment by an agency that is has not complied with the FOI law might be regarded as a sneaky and cute practice inconsistent with the requirement to behave honestly and with integrity.

Under FOI I seek access to a document that sets out the following information for each entry in the Disclosure log from 1 Jan 2018 to date of this request for access:

- (a) Date document(s) provided to FOI Applicant
- (b) Reference No
- (c) Title
- (d) Date information about each release was published in the disclosure log as required by law.

The requested information should be readily available in the Department's computerised records. At Senate Estimates on 21 Oct the Secretary, Mike Pezzullo, noted that there are mandatory steps under the legislation that obviously have to be adhered to. That being the case it is highly likely that the Department records the publication date so as to ensure compliance with the FOI legislation. At Senate hearings on 15 November 2019 the following exchange took place:

Senator URQUHART: Do you make a point of being regularly briefed on the issues around the performance of the department under freedom of information or is it only in relation to when you have a hearing or Senate estimates?
Mr Pezzullo : Both, and they're somewhat connected because estimates is regular enough that it's a great checkpoint in which to update yourself on management performance. In any event, separately we have management dashboards and other reports available.

Yours faithfully,

s. 47F

Please use this email address for all replies to this request:
s. 47F(1)

Is foi@homeaffairs.gov.au the wrong address for Freedom of Information requests to Department of Home Affairs?
If so, please contact us using this form:
https://www.righttoknow.org.au/change_request/new?body=dibp

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s. 47F(1)

From: FOI
Sent: Tuesday, 18 August 2020 6:48 AM
To: s. 47E(d)
Subject: FW: Internal review of Freedom of Information request - Dept of Home Affairs - Non Compliance with FOI legislation Disclosure Log [SEC=OFFICIAL]

s. 22(1)(a)(ii)

-----Original Message-----

From: s. 47F(1)
Sent: Monday, 17 August 2020 6:13 PM
To: FOI <foi@homeaffairs.gov.au>
Subject: Internal review of Freedom of Information request - Dept of Home Affairs - Non Compliance with FOI legislation Disclosure Log

Dear Department of Home Affairs,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Home Affairs's handling of my FOI request 'Dept of Home Affairs - Non Compliance with FOI legislation Disclosure Log'.

Thank you for providing access to the documents (redacted). I seek an internal review of the decision.

On 3 December 2019 I sought access to a document that sets out the following information for each entry in the Disclosure log from 1 Jan 2018 to date of the request for access:

- (a) Date document(s) provided to FOI Applicant
- (b) Reference No
- (c) Title
- (d) Date information about each release was published in the disclosure log as required by law.

The Department decided not to consider (a), (b), and (c) of my request because the information was located in the disclosure logs published on the Department's website. Thus, the Department decided to limit my request to (d). Date information about each release was published in the disclosure log as required by law.

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The Department identified 53 documents as falling within the scope of the request at (d). These documents were in the possession of the Department on 3 December 2019 when my request was received. The decision in relation to the documents in the possession of the Department which fall within the scope of the request was to release relevant information in 53 documents in full. (Documents 3 and 4 appear to be duplicate).

On 30 June 2020 the Department provided access to documents comprising of a series of emails from Web Services to (redacted) about upload requests to the Disclosure Log. The emails contained commentary such as, pages now live, this has now been published, your updated content now live, request has been actioned.

I seek an internal review of the decision. First, the decision not to progress (a), (b) and (c) of the request because the information was available elsewhere ignores the reality of the right of access under the FOI Act is to documents, rather than to information. Moreover, the information that is available on the website is incomplete, not in accordance with the FOI Act and lacking in certainty.

On its website the Departments states that the information shown in this disclosure log is information to which we gave access in response to a request under section 11A of the Freedom of Information Act 1982 (FOI Act). The public have a right to assume a Commonwealth Department is complying with its legal obligations – particularly obligations passed by Federal Parliament. Regrettably, a misguided belief in so far as this Department is concerned.

The released emails reveal a system to upload documents to the Disclosure Log being implemented at the administrative convenience of the Department with no apparent effort made to ensure that the Department complied with the law. It is a challenge to identify instances where the Department complies with the law. No such challenge to identify instances of the Department failing to comply with the law. Some examples, the released emails reveal that between late December 2019 and 27 Feb 2020 more than 100 new items were logged in the 2019 Disclosure Log. In that brief period at least 100 entries reflecting failure by the Department to comply with the law. A few other examples:

On 5 Jan 2016 the Department granted access to documents under FOI. The release was not reflected in the Disclosure Log until 2 Feb 2018.

On 19 Aug 2016 the Department granted access to documents under FOI. The release was not reflected in the Disclosure Log until 2 Feb 2018.

On 18 Dec 2017 the Department granted access to documents under FOI. The release was not reflected in the Disclosure Log until 2 Feb 2018.

On 25 Sept 2018 the Department granted access to documents under FOI. The release was not reflected in the Disclosure Log until September 2019.

On 3 Apr 2018 the Department granted access to documents under FOI. The release was not reflected in the disclosure log until 3 Aug 2018 and then only after someone within the Department made a request for an urgent to the log. Given the nature of the documents released in April one is left to ponder whether the public controversy involving the Minister Dutton and the grant of visas for au pairs had a bearing on the “urgency” in August.

On 16 August 2018 the Department granted access to documents under FOI. The release was not reflected in the disclosure log until 23 October 2018 – or so it seems in the disclosed documents. In August 2019 the Minister caused documents to be produced to the Senate. Included in the documents is the following:

A copy of the Paladin Holdings PTE Ltd PNG Services Contract (which only removed commercial in confidence information), was made available on 16 August 2018 in the FOI disclosure log on the Department’s website, which is available to the public.

One is left to ponder the trustworthiness of the emails as to the date information was uploaded to the disclosure log (i.e 23 Oct) against the trustworthiness of the information in the documents produced to the Senate (i.e 16 Aug).

Second, under the Public Service Act the responsibilities of the Secretary of a Department include implementing measures directed at ensuring that the Department complies with the law e.g. the Department must publish information in a disclosure log within ten working days after the FOI applicant was 'given access' to a document. The Code of Conduct for the Australian Public Service requires that an employee must act with care and diligence in connection with APS employment.

At Senate Estimates on 21 Oct the Secretary, Mike Pezzullo, noted that there are mandatory steps under the legislation that obviously have to be adhered to. At Senate hearings on 15 November 2019 the following exchange took place:

Senator URQUHART: Do you make a point of being regularly briefed on the issues around the performance of the department under freedom of information or is it only in relation to when you have a hearing or Senate estimates?

Mr Pezzullo: Both, and they're somewhat connected because estimates is regular enough that it's a great checkpoint in which to update yourself on management performance. In any event, separately we have management dashboards and other reports available.

That being the case it is highly likely that the Department records the publication date so as to ensure compliance with the FOI legislation. There is no indication the Department considered it could produce a document containing all of the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information.

Third, on 25 October 2019 the Office of the Australian Information Commissioner (OAIC) opened an investigation into the Department of Home Affairs' compliance with the Freedom of Information Act 1982 in processing requests for non-personal information. The Disclosure Log relates to non-personal information and any investigation would encompass compliance by the Department with the law on disclosure. One would expect the Department to make available or the OAIC to request a document containing the information I sought in the FOI application.

A full history of my FOI request and all correspondence is available on the Internet at this address:
s. 47F(1)

Yours faithfully,

s. 47

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s. 47F(1)

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