



27 May 2019

Ms Regina Jeffries
BY EMAIL: foi+request-5131-608cdb9f@righttoknow.org.au

In reply please quote:

FOI Request: FA 18/11/01551
File Number: ADF2019/60244

Dear Ms Jeffries

Decision on Internal Review – *Freedom of Information Act 1982*

I refer to your correspondence dated 8 February 2019 in which you request that the Department of Home Affairs (the Department) review its decision on access to documents dated 6 February 2019 under the *Freedom of Information Act 1982* (the FOI Act).

This letter is to advise you of the Department's decision on the internal review.

1 Scope of Original Request

The scope of your original request for access to documents under the FOI Act, dated 28 November 2018 was as follows:

- 1. The number of individuals who have made protection claims before, or at, immigration clearance at airports since 2008, broken down by fiscal year.*
- 2. The number of those individuals granted protection visas since 2008, broken down by fiscal year.*

Please include the individual's country of origin and airport where the claim was made.

2 Original Decision on Access

On 6 February 2019, the Department made its original decision on your access request. The Department conducted reasonable searches and found no documents that fell within the scope of your original request. As such, a decision was made under section 24A of the Act to refuse access to the documents sought.

3 Request for Internal Review

On 8 February 2019, you requested the Department to review its decision dated 6 February 2019 and submitted the following.

First, the FOI requested information about the number of individuals who have made protection claims before, or at, immigration clearance, not the number of individuals who have "lodged" a protection claim. An individual may raise a protection claim at or before immigration clearance yet be denied the opportunity to lodge that claim. The Department of Home Affairs' Protection Visa Processing Guidelines, Annexure 2 requires an interview by an Immigration Inspector or Departmental officer where either "an unlawful non-citizen is detected at an airport or seaport" or "a person has their visa cancelled in immigration clearance." In those cases, "if the person raises protection related claims" (emphasis added), the interviewing officer must interview the person for a second time and explore the protection claims. If the person makes a prima facie protection claim, the person is "screened in to the PV process and permitted to enter Australia" to lodge the protection claim. The Department has thus misapprehended the FOI request and provided an incorrect basis for refusal.

Second, after 2014, a person requesting asylum protection before being "immigration cleared" can no longer lodge a permanent protection visa and may only request a 3-year TPV or 5-year SHEV. Migration Regulations, Schedule 1, Part 4, Items 1401, 1403, and 1404; Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, Explanatory Memorandum, p. 8.

Therefore, the location of the applicant in Australia at the time that the protection request is made in relation to the migration zone is highly relevant to the assessment of the applicant's asylum claim -- the location of the individual not only dictates the type of protection claim that may be lodged, their location at the time the protection request is made may determine whether a claim may be lodged at all. The Department's basis for refusal is thus in error.

Review of the Department's decision is necessary to redress the errors made by the Authorised Decision Maker and conduct a thorough and proper search for the relevant information.

4 Authority to Make Decision

I am authorised under section 23 the FOI Act to make decisions on FOI requests, including internal reviews.

5 Internal Review Decision

I have decided to affirm the original decision of the Department dated 6 February 2019 ("the original decision").

1 Relevant material

In reaching my decision I referred to the following:

- The terms of your original request
- the submission made by you in support of your request for internal review
- the documents relevant to the request
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- the FOI Act; and
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

2 Reasons for Internal Review Decision

I have considered the submissions made by you in relation to your reasons for requesting an Internal Review and have consequently liaised with the relevant areas of the Department to conduct additional searches for information that may have been recorded for persons raising protection claims at Australian borders.

The Department does not hold an existing discrete written document that contains the information that you are seeking to access.

I have considered whether the Department can extract the data you have requested access to 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))

I note you have stated that *"if the person raises protection related claims... the interviewing officer must interview the person for a second time and explore the protection claims"*.

Having regard to your statement above and your Internal Review submission, I sought confirmation on the procedure relating to persons raising protection claims at the Australian Borders, and have determined that the procedure directs that a referral must be recorded for each traveller who seeks to engage Australia's protection obligations.

Further, I have confirmed that referrals for persons seeking to engage Australia's protection claims are in fact recorded in the relevant system under one of two separate codes. One of these codes is specific to Refugee Claims, the other is for Manual Referrals/Reason Unknown. A very low number of referrals have been recorded under the code for Refugee Claims and as there is no distinct way of determining which of the Manual referrals may have related to protection claims, the total number of persons raising protection claims at Australia's borders remains undetermined.

As such, having regard to your request and the types of documents that may fall within the scope of your request I am satisfied that all reasonable steps have been taken to locate any document relevant to your request.

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 undertaken reasonable searches in relation to your request and that no documents were in the possession of the Department on 8 February 2019 when your FOI request for internal review was received. As such I am refusing access to the documents requested by you based on the application of section 24A of the FOI Act.

3 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2019C00055>. If you are unable to access the legislation through this website, please contact our office for a copy.

4 Your Review Rights

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>.

5 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.

6 Contact

Should you wish to discuss my decision, please do not hesitate to contact via email at foi.reviews@homeaffairs.gov.au.



Slava Graskoski
Authorised Decision Maker
Department of Home Affairs