



27 September 2024

Oliver Smith (Right to Know)

BY EMAIL: foi+request-11887-9212e9b9@righttoknow.org.au

In reply please quote:

FOI Request: FA 24/08/00875

File Number: FA24/08/00875

Dear Oliver Smith,

Freedom of Information (FOI) request – Decision

On 14 August 2024, 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:

Original scope dated 14/08/2024:

Under the FOI Act, please provide a copy of the brief titled “Consideration of possible revocation of cancellation of <redacted> visa under subsection 501c of the Migration Act 1958 - <redacted> - Location: Villawood Immigration Detention Centre” sent to the Minister for Immigration’s office on 08/09/2023 with the PDR number: MS23-001623.

On 26 August 2024 you agreed to revise the scope of your request to the following documents:

Revised scope dated 26/08/2024:

Under the FOI Act, please provide the signed version of the brief titled “Consideration of possible revocation of cancellation of <redacted> visa under subsection 501c of the Migration Act 1958 - <redacted> - Location: Villawood Immigration Detention Centre” with the PDR number: MS23-001623.

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 document with attachments 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 document to which you sought access

4 Document in scope of request

The Department has identified one document with attachments as falling within the scope of your request. This document was in the possession of the Department on 14 August 2024 when your request was received.

5 Decision

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- Defer access to the document under section 21 of the FOI Act.

6 Reasons for Decision

Section 21 of the FOI Act provides reasons for deferring access as follows:

21 *Deferment of access*

- (1) *An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:*
- (a) *if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published; or*
 - (b) *if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the expiration of a reasonable period after its preparation for it to be so presented or made available; or*
 - (c) *if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or*
 - (d) *if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament; or*
 - (e) *if:*
 - (i) *the request is received by a Norfolk Island Minister or a Norfolk Island authority; and*
 - (ii) *a Norfolk Island Minister considers that the document concerned is of such general public interest that the Legislative Assembly of Norfolk Island should be informed of the contents of the document before the document is otherwise made public;**until the end of 5 sitting days of the Legislative Assembly of Norfolk Island.*

- (2) *Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.*

The responsible business area has advised that the information you have requested is a notice to be tabled in the Parliament on 8 October 2024. After this time, the information you have requested will become publically available, after which the information may be released to you. I therefore find that section 21(1)(a & b) of the FOI Act applies in this instance.

The Department will contact you by email when the document can be released to you, or you can be referred to the Minister's announcement.

7 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.

8 Your Review Rights

Internal Review

You do not have the right to seek an internal review of this decision. This is because section 54E(b) of the FOI Act provides that, when an agency is deemed to have refused an FOI request under section 15AC of the FOI Act, the applicant does not have the right to seek an internal review of the deemed decision.

The Department was deemed to have refused your request under section 15AC of the FOI Act because it did not make this decision within the statutory timeframes for the request.

While the Department has now made a substantive decision on your request, section 15AC of the FOI Act continues to apply to your request, which means that any request you make for internal review will be invalid.

Information Commissioner Review

You can instead request the Australian Information Commissioner to review this decision. If you want to request an Information Commissioner review, you must make your request to the Office of the Australian Information Commissioner (OAIC) within 60 days of being notified of this decision.

You can apply for an Information Commissioner review at: [Information Commissioner review application form on the OAIC website](#).

If you have already applied for an Information Commissioner review, there is no need to make a new review request. The OAIC will contact you shortly to give you an opportunity to advise whether you wish the review to continue, and to provide your reasons for continuing the review.

You can find more information about Information Commissioner reviews [on the OAIC website](#).

9 Making a complaint

You may make a complaint to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. This is a separate process to the process of requesting a review of the decision as indicated above.

You can make an FOI complaint to the Office of the Australian Information Commissioner (OAIC) at: [FOI Complaint Form on the OAIC website](#).

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.

Yours sincerely

Electronically signed

Gemma
Position number 60045916
Authorised Decision Maker
Department of Home Affairs