



21 March 2023

D.A.

BY EMAIL: [foi+request-9935-0c437947@righttoknow.org.au](mailto:foi+request-9935-0c437947@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA23/02/00916

File Number: FA23/02/00916

Dear D.A.

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

I refer to your email dated 14 February 2023, in which you requested access to documents held by the Department of Home Affairs (the ) 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 held by the Department:

*Please provide all emails, correspondence, ministerial briefings, and all other documents dated on or after 1 January 2020, relating to the Department's policies, procedures, decision-making, etc. regarding English language tests for Australian visas, including but not limited to all documents relating to the 2022 Request for Expression of Interest for the selection of English language tests for Australian visas*

On 16 February 2023 the Department sent you a notice under section 24AB(2) of the FOI Act, advising you that a 'practical refusal reason' existed in relation to this request. We advised you that we were satisfied that your request met the definition of a practical refusal reason in section 24AA(1) of the Act, as it appeared that the work involved in processing the request would 'substantially and unreasonably divert the resources' of the Department from its other operations.

Under the notice, you were provided with a 14 day 'consultation period', during which you could consult with us about the scope of the request. The notice advised you that you were required to respond before the end of the consultation period and either (a) withdraw your request or (b) revise the scope of your request or (c) confirm that you did not wish to revise the scope. The notice advised that if you failed to respond before the end of the consultation period to do one of those three things, the request would be 'deemed withdrawn' under section 24AB(6)(a) of the Act.

On the 16 March 2023 in response to the above notice you wrote clarifying the terms of your request as follows:

*I write to clarify my FOI request. I am interested in all documents that relate to the Department's decision making on which English language tests are permissible for demonstrating English language proficiency requirements for various visas. (Which tests are permissible does not differ between visa subclass.) This would include, but is not limited to.*

- *any discussions of the requirements for such tests*
- *determinations of how test score cut-offs for visa requirements are associated consultations with subject matter experts both inside and outside of the Department on the subject*
- *correspondence with universities relating to how the Department's English language proficiency requirements interact with their English language proficiency requirements*

## **2 Authority to make decision**

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents.

## **3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- 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
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

## **4 Decision**

My decision is to refuse access under section 24(1)(a)(i) of the Act.

My reasons are set out overleaf.

## **5 Section 24 of the FOI Act - Power to refuse request - diversion of resources**

### **5.1 Power to refuse request**

Section 24(1)(b) of the FOI Act provides that if the Department is satisfied that a practical refusal reason exists in relation to a request, the Department must undertake a consultation process with you, and if, after that consultation process, the Department remains satisfied that the practical refusal reason still exists, the Department may refuse to give you access to the documents subject to the request.

The Department has undertaken the consultation process in section 24AB, nevertheless I remain satisfied that your request still meets the definition of a 'practical refusal reason' in section 24AA(1)(a)(i) in that processing the request will involve a substantial and unreasonable diversion of the Department's resources.

## 5.2 Reasons for practical refusal

A *practical refusal reason* exists under section 24AA of the FOI Act if either (or both) of the following applies:

- (1)(a)(i) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations
- (1)(b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Department to be able to identify it.

The Department believes that documents falling within the scope of your request would encompass a number of branches within the Immigration Services Group. This Group consists of business areas involved with processing of Australian visas where there is an English language requirement as well as the Migrant and English Language Services Branch.

A preliminary assessment has been conducted regarding documents that would likely be captured by the revised scope of your request. These include:

- files & electronic documents
- emails,
- correspondence
- ministerial briefings
- minutes of meetings
- and all other documents

These documents will be located over a number of Departmental systems in multiple branches including:

- The Departments Electronic record keeping system - Context Manager
- The Parliamentary Document Management System (PDMS)
- Individual and group emails (including enterprise vault)
- Departmental System drives for Individual branches

Noting the use of "*not limited too*" in your revised scope the business area involved has identified that it is not possible to estimate the number of documents likely to fall within scope however it is expected to be in excess of one thousand documents.

Additionally a number of external stakeholders have been identified including

- English Language test providers
- Universities and other Educational Institutions
- Other Government departments / authorities
- Business Regulatory Bodies

Taking into consideration this assessment of the number and variety of documents that are identified as likely to fall within the scope of your request the business area considers that it would take 1 FTE an estimated three months to complete the search and retrieval of documents as well as any external and internal consultation required.

On that basis I am satisfied that the Department would be required to divert significant resources from its current operations in order to identify, locate and collate the documents held by the responsible business areas in addition to the time required to make and prepare a decision on access to those documents.

Such a diversion would result in a significant drain on the resources involved in the processing of visas for travel to Australia including within the skilled visa branch which has been identified by Government as a priority processing area.

After considering your response to the Departments consultation, I am still satisfied that the work involved in processing the request will substantially and unreasonably divert the resources of this Department from its other operations. Therefore, I am satisfied that a practical refusal reason still exists under section 24AA(1)(a)(i) of the Act and am refusing access to documents falling within the scope of your request on that basis.

## **6 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>.

## **7 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 241  
Melbourne Vic 3001

### 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 <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

## **8 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.

## **9 Contacting the FOI Section**

Should you wish to discuss my decision, please do not hesitate to contact via email at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).

Mary | Position Number # 11706  
FOI and Records Management Branch | Legal Group  
Department of Home Affairs