



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/07/01282
File Number ADF2015/38460

Scope of request

I seek the following in the public interest:

Number of people per year from 1 July 2004 -30 June 2015 inclusive who have had visas cancelled pursuant to section 501(2), 501(3) and 501(3a) Migration Act 1958.

To include: Numbers of -

- 1. Specified provision for cancellation (eg: section 501(2), 501(3) and 501(3a)(a)(i),(ii) or (b)).*
- 2. Specific provision for reason for decision where section 501(6) or 501(7) applied.*
- 3. The number of cases per year where section 503A applied to the decisions reasons.*

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 Departmental records.

Information considered

In reaching my decision, I have considered the following:

- ✓ The *Freedom of Information Act 1982*;
- ✓ Departmental documents (identified below); and
- ✓ The Australian Information Commissioner's Guidelines relating to access to documents held by government.

Creating documents

The Act gives an applicant a right of access to 'documents', rather than to 'information'.

Under the Act there is no general obligation on an agency to reduce 'information' to written documentary form in order to facilitate an FOI request. This means that there is no obligation on an agency to 'create' a new document in order to answer an FOI request.

However, s.17(1)(c) of the Act contains an exception to this general rule. It provides that where it appears from an FOI request:

- that the applicant desires information that is not available in a discrete form in the written documents of the agency, and
- the agency can produce a document, using a computer or other equipment *ordinarily available to it* for retrieving or collating the stored information,

the agency must produce a written document (transcript, hard copy, computer printout, etc.) containing the information and provide the document to the FOI applicant (subject to exemption claims).

The agency is required to treat the request as if it were a request for such written document containing the requested information in discrete form.

I note that the Information Commissioner's Guidelines provide that an agency is not required to comply with s.17(1) of the Act if to do so would *substantially and unreasonably divert the resources of the agency from its other operations* (s.17(2) of the Act).

In this matter, the Department could produce in part the requested information through existing tools and system functionality.

Documents in scope and Decision

1. Departmental document relating to point 1 of the scope: *Section 501 Cancellations by financial year* – containing 1 folio.

The information contained in the table has been replicated in various internal Departmental reporting documents.

2. Departmental document relating to point 2 of the scope: *Section 501 cancellations for 2014-2015 by power and character test ground* – containing 1 folio.

Although it is not information *ordinarily available* within the meaning of s.17 of the FOI Act, for the purposes of this request, the Character Assessment and Cancellations Branch conducted a 'one off' data extraction for the 2014-15 financial year, which contains a breakdown of the cancellations by the power and ground used. The results are presented in the table.

In undertaking this data extraction, it is not possible to provide information on which sub-provision of s.501(7) was used for those cancellations decisions relying on the character test ground at s.501(6)(a). (The two provisions are inter-linked).

3. Departmental document relating to point 3 of the scope: *Section 501 cancellations involving section 503A confidential information* – containing 1 folio.

The number of s.501 cancellations that involved consideration of 'confidential information' provided under s.503A of the *Migration Act 1958* is contained in the table.

Before 2008-09, the Department had no means to systematically analyse/report on numbers of decisions involving s.503A information.

It is estimated that calculating the number of cases per year where s.503A applied to the decisions before 2008-09 would require manual checking of physical files for 447 cases. It is further estimated that it would take approximately one hour per case to verify whether s.503A material was relied on. The process would involve the recall of files, reviewing of file material (often consisting of multiple parts), identifying relevant documentation and maintaining track results on a manual spreadsheet.

I consider that actioning this part of the request would involve a *substantial and unreasonable diversion of resources* which may form the basis for a *practical refusal* under s.24AB(2) of the Act.

Reasons for decision

I am satisfied that I have been provided with all the relevant documents to consider in my decision. I have considered the documents and am satisfied that no exemptions apply. Therefore, I am releasing the relevant documents in full.



Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

5 November 2015



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/07/01282
File Number ADF2015/38460

1. Departmental document

Folio	Description	Decision	Legislation
1	Section 501 Cancellations by financial year	Release	

2. Departmental document:

Folio	Description	Decision	Legislation
1	Section 501 cancellations for 2014-2015 by power and character test ground	Release	

3. Departmental document:

Folio	Description	Decision	Legislation
1	Section 501 cancellations involving section 503A confidential information	Release	