



**Australian Government**  
**Department of Immigration and Border Protection**

## Attachment A

### DECISION RECORD

#### Details

FOI Request FA 14/03/00162-R1  
File Number ADF2014/7598

#### Request

*I request a copy of all emails, policies, procedures or other documents created by the Department which relate to the Department's use of s15(2)(c) of the FOI Act.*

*Furthermore I request a copy of all emails, policies, procedures or other documents created by the Department which relate to the Department's handling of complaints that come from the RightToKnow website (<<http://www.righttoknow.org.au/>>)*

*I wish to exclude clarification requests that were sent from the Department to FOI clients referencing s.15(2)(c). I do not exclude communication with FOI clients where, for example, there is discussion around the use of s.15(2)(c) or where a FOI client has made a complaint to the Department on the use of s.15(2)(c).*

*I am happy to exclude email addresses and telephone numbers from my request. I am also happy to exclude names of members of the public. I do not wish to exclude names of current or former employees or contractors of the Department.*

#### Documents in scope

1. I have located 2 additional documents that are in scope.
2. As the Department previously identified 3 documents as being in scope, with these additional documents, I am satisfied that the Department holds 5 documents in scope. I have listed them in the Schedule of Documents attached to this decision.

#### Decision and reasons for decision

3. I am authorised under s.23 of the *Freedom of Information Act 1982* (the Act) to make a decision on your FOI request for internal review of the decision notified to you by Ms Bevan on 28 March 2014.
4. My role under the Act is to make a fresh decision (s.54C(3) of the Act), taking into account the relevant documents and information.

**Attachment A continued****DECISION RECORD**

5. In reaching my decision, I have considered the following:
- documents held by the Department;
  - where relevant, your views and advice;
  - the Act;
  - FOI Guidelines published by the Office of the Australian Information Commissioner; and
  - advice from the relevant business areas within the Department.
6. The documents in scope of the request include information that I am satisfied is irrelevant to the scope of the request. This information is comprised of the names of members of the public who submitted requests under the Act to the Department and information that is not relevant to the process of testing 'validity' of requests under s.15(2)(c) of the Act. Therefore, I have deleted this out of scope information as 'irrelevant material' as defined in s.22(1)(a)(ii) of the Act.



Angela O'Neil  
Authorised decision maker  
FOI & Privacy Policy Section  
Department of Immigration & Border Protection

11 April 2014



**Australian Government**  
**Department of Immigration and Border Protection**

**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 14/03/00162-R1  
File Number ADF2014/7598

<b>Doc No</b>	<b>Pages</b>	<b>Date</b>	<b>Description</b>	<b>Decision</b>
1	1	14/08/2013	Internal email regarding use of s.15(2) of the Act – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
2	2-4	14/08/2013	Email response to third party applicant re FA 13/08/00260 – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
3	5-6	14/08/2013	Email to third party applicant re FA 13/08/00254 – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
4	7-8	15/08/2013	Internal email regarding use of s.15(2) of the Act – irrelevant material deleted under s.22(1)(a)(ii) of the Act	Release in full
5	9-12	27/02/2014	Email response to applicant re FA 14/02/01093	Release in full

*Freedom of Information Act 1982*

**22 Access to edited copies with exempt or irrelevant matter deleted**

*Scope*

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

*Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

*Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

**23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

#### **54 Internal review—access refusal decision**

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the *internal review*) of the access refusal decision.

#### **54B Internal review—application for review**

- (1) An application for internal review must be in writing and must be made:
  - (a) within 30 days, or such further period as the agency allows, after the day the decision is notified to the applicant for internal review (the *internal review applicant*); or
  - (b) in the case of an access refusal decision of a kind mentioned in paragraph 53A(b), (c) or (f), within whichever of the following is the longer period:
    - (i) 30 days, or such further period as the agency allows, after the day the decision is notified to the internal review applicant;
    - (ii) 15 days after the day the access referred to in that paragraph was given (or purported to be given).

...

#### **54C Internal review—decision on internal review**

##### *Scope*

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the *original decision*) is made in accordance with this Part.

##### *Decision*

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

##### *Notice of decision*

- (4) Section 26 extends to a decision made under this section

**From:** [Angela O'NEIL](#) on behalf of [FOI](#)  
**To:** [Janelle RAINERI](#)  
**Subject:** Validate some requests for me please :) [DLM=For-Official-Use-Only]  
**Date:** Wednesday, 14 August 2013 11:15:00 AM

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**For-Official-Use-Only**

Hi Janelle

We're trialling a different way to proceed with the Detention Log requests – which is to treat them as invalid under s.15(2) unless they confirm the address by responding to an email from me testing the address. As part of the process, I prematurely marked these ones as 'invalid' instead of leaving them at the validation stage. I was wondering if you could take these ones back to the 'validation' stage.

- FA 13/08/00262 – s. 22(1)(a)
- FA 13/08/00267 – s. 22(1)(a)
- FA 13/08/00301 – s. 22(1)(a)(ii)
- FA 13/08/00260 – s. 22(1)(a)(i)
- FA 13/08/00254 – s. 22(1)(a)(i)

Thanks – I won't let it happen again.

Cheers

Angie

Angela O'Neil  
Assistant Director  
FOI & Privacy Policy  
Department of Immigration and Citizenship  
Telephone: (02) 6264 1382  
Email: [foi@immi.gov.au](mailto:foi@immi.gov.au)

**For-Official-Use-Only**

## E-mail Message

**From:** [Angela O'NEIL \[EX:/O=IMMI/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=EXBTAZBB9\]](mailto:Angela.O'NEIL [EX:/O=IMMI/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EXBTAZBB9]@immi.gov.au)  
**To:** [foi+request-326-c769057b@righttoknow.org.au](mailto:foi+request-326-c769057b@righttoknow.org.au) [SMTP:foi+request-326-c769057b@righttoknow.org.au]  
**Cc:**  
**Sent:** 14/8/2013 at 1:32 PM  
**Received:** 14/8/2013 at 1:32 PM  
**Subject:** Your request FA 13/08/00260 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Our references: FA 13/08/00260; ADF2013/25003

Dear [s. 22\(1\)\(a\)\(ii\)](#)

Thank you for confirming that you wish to wish to receive notices from DIAC via this email address and that DIAC can anticipate that you will respond to communications that are sent to you at this address. I am satisfied that the requirement in s.15(2)(c) of the Act is met and will progress your request accordingly.

Yours sincerely

Angela O'Neil  
 Assistant Director

FOI & Privacy Policy  
 Department of Immigration and Citizenship  
 Telephone: (02) 6264 1382  
 Email: [HYPERLINK "mailto:foi@immi.gov.au"foi@immi.gov.au](mailto:foi@immi.gov.au)

UNCLASSIFIED

**From:** [s. 22\(1\)\(a\)\(ii\)](#) [mailto:[s. 22\(1\)\(a\)\(ii\)](#)]  
**Sent:** Saturday, 10 August 2013 6:03 PM  
**To:** FOI NSW  
**Subject:** Your references: FA 13/08/00260; ADF2013/25003

I refer to your correspondence dated 9 August 2013 in response to my email of 24 July 2013 (the FOI request), under the Freedom of Information Act 1982 (Cth,) and asking that the Department of Immigration and Citizenship provide me with a copy of the following document:

- Incident Detail Report 1-2SOSIL from the Department's Compliance Case Management, Detention and Settlement Portal. I also requested any documents attached to the detailed report.

 Released by DPP under the  
 Freedom of Information Act 1982

I would like to resolve any doubt you might have that the request was not made under the Freedom of Information Act 1982 (Cth). It was made under the Freedom of Information Act 1982 (Cth) ("the FOI Act").

In particular, I confirm that the email address provided in the request (the email address) is an address to which the Department can send notices.

You state you are not satisfied that the email address meets the requirement of 'details of how notices under this Act may be sent to the applicant', referencing section15(2)(c).

I have noted the paradox that you have sent your notice to an email address which you say is not sufficient for the purposes of your considering the FOI request.

By sending your notice to the email address, I take it you are now satisfied that the email address meets the requirements of the FOI Act.

Further, subsection 15(2)(c) makes it clear that an electronic address meets this requirement. The full text reads:

"(c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication)".

The term "electronic communication" has the same meaning as in the Electronic Transactions Act 1999 (see FOI Act s4(1)).

That Act defines an "electronic communication" as follows:

"(a) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy;

(b) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system."

It is clear enough that my request "provided details of how notices under the Act may be sent to [me]".

The email address provided in my request is an electronic address to which the Department may send notices by communication of information in the form of data, text or images by means of guided electromagnetic energy.

In the same way that Section 15(2A) authorised me to make my request by sending the application to an electronic address specified by the department, I designate this address as the detail required by Section 15(2)(c) of how a notice may be sent to me.

Please note that sending notices to that email address is the only address to which notices may be sent in relation to the FOI request.

It is of no relevance that any notice sent to me at this electronic address subsequently may be published, on the internet or anywhere else by me or anybody else.

Yours sincerely

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

Released by DIBP under the  
Freedom of Information Act 1982

## E-mail Message

**From:** [Angela O'NEIL \[EX:/O=IMMI/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=EXBTAZBB9\]](mailto:Angela.O'NEIL [EX:/O=IMMI/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EXBTAZBB9]@righttoknow.org.au)  
**To:** [s. 22\(1\)\(a\)\(ii\) \[SMTP:foi+request-319-3906f687@righttoknow.org.au\]](mailto:s.22(1)(a)(ii) [SMTP:foi+request-319-3906f687@righttoknow.org.au])  
**Cc:**  
**Sent:** 14/8/2013 at 1:37 PM  
**Received:** 14/8/2013 at 1:37 PM  
**Subject:** RE: Your request for an incident report [SEC=UNCLASSIFIED]

UNCLASSIFIED

Our references: FA 13/08/00254; ADF2013/24998

Dear [s. 22\(1\)\(a\)\(ii\)](#)

Thank you for confirming that you wish to wish to receive notices from DIAC via this email address and that DIAC can anticipate that you will respond to communications that are sent to you via this address. I am satisfied that the requirement in s.15(2)(c) of the Act is met and will progress your request accordingly.

Yours sincerely

Angela O'Neil  
 Assistant Director  
 FOI & Privacy Policy  
 Department of Immigration and Citizenship  
 Telephone: (02) 6264 1382  
 Email: [foi@immi.gov.au](mailto:foi@immi.gov.au)

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

**From:** [s. 22\(1\)\(a\)\(ii\) \[mailto:foi+request-319-3906f687@righttoknow.org.au\]](mailto:s.22(1)(a)(ii) [mailto:foi+request-319-3906f687@righttoknow.org.au])  
**Sent:** Saturday, 10 August 2013 5:17 PM  
**To:** FOI  
**Subject:** Re: Your request for an incident report [SEC=UNCLASSIFIED]

Dear Angela,

This is to confirm that the email address provided is an address to which the Department can send notices. You state you are not satisfied that the address meets the requirement of 'details of how notices under this Act may be sent to the applicant', referencing Section 15 (2)(c).

The subsection however makes it clear that an electronic address meets this requirement. The full text reads:  
 (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication. "electronic communication" has the same meaning as in the Electronic Transactions Act 1999 .

In the same way that Section 15(2A) authorised me to make my request by sending the application to an electronic address specified by the department, I designate this address as the detail required by Section 15(2)(c) of how a notice may be sent to me.

It is of no relevance that any notice sent to me at this electronic address subsequently may be published on the internet.

Yours sincerely,

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 Freedom of Information Act 1982

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

UNCLASSIFIED

Released by DIBP under the  
*Freedom of Information Act 1982*

**From:** [Angela O'NEIL](#) on behalf of [FOI](#)  
**To:** [Linda ROSSITER](#); [Janelle RAINERI](#); [Rowan PATTERSON](#); [Steven HOCKING](#); [Ashley SMITH](#)  
**Subject:** Cases to be allocated and new processes for RTK detention log requests [DLM=For-Official-Use-Only]  
**Date:** Thursday, 15 August 2013 12:10:00 PM  
**Importance:** High

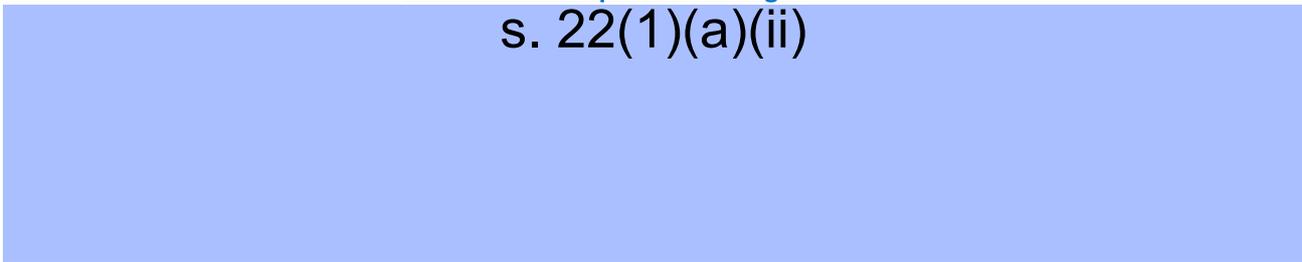
**For-Official-Use-Only**

Hi All

Linda and I had a chat about the way to progress the 'Right to Know' detention incident requests while they are dribbling in as they are.

The current process is:

- Ashley registers to the point of 'validation' and then assigns to me.
- I write to the applicant to confirm the email address, giving 3 working days.
- If no response, then I close as Invalid.
- If a response, I mark as valid and reassign to Ashley for further registration to the stage of 'move to access team' and then assigns them to me.
- I allocate to the decision maker. If I'm not here Ashley will allocate.
- The decision maker [assesses the request for charges](#).



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

I should also mention that for consistency, any requests from the RTK website will be sent an email prior to validation seeking confirmation that they will correspond with DIAC using the address – not just the detention log requests.

**Cases to be allocated**

Currently have the following cases to be allocated with at least 3 more RTK detention incident reports currently being validated:

s. 22(1)(a)(ii)	Policy documents relating to 'managed accommodation' in detention facilities
s. 22(1)(a)(ii)	Review of decision on a detention incident report (Amy's)
s. 22(1)(a)(ii)	Incident report via RTK
s. 22(1)(a)(ii)	Incident report via RTK
s. 22(1)(a)(ii)	Labour agreement via RTK – 1 document in Trim
s. 22(1)(a)(ii)	Incident report via RTK
s. 22(1)(a)(ii)	Incident report via RTK
s. 22(1)(a)(ii)	Meeting minutes from the 'expert panel' meetings –

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	possibly no documents in scope
s. 22(1)(a)(ii)	5 incident reports – NOT via RTK – 7 Aug received
s. 22(1)(a)(ii)	Another 3 incident reports – NOT via RTK – 13 Aug

Any takers? The s. 22(1)(a)(ii) really needs to be allocated asap as does the first s. 22(1)(a)(ii) one. We have a rather complex one in the pipeline from s. 22(1)(a)(ii) as well.

Cheers

Angie

Angela O'Neil  
Assistant Director  
FOI & Privacy Policy  
Department of Immigration and Citizenship  
Telephone: (02) 6264 1382  
Email: [foi@immi.gov.au](mailto:foi@immi.gov.au)

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**E-mail Message**


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**From:** [Janelle RAINERI \[EX:/O=IMMI/OU=EXCHANGE ADMINISTRATIVE GROUP \(FYDIBOHF23SPDLT\)/CN=RECIPIENTS/CN=PRJRCYE15\]](mailto:Janelle.RAINERI@immi.gov.au)  
**To:** [Ben Fairless \[SMTP:foi+request-529-93665f99@righttoknow.org.au\]](mailto:Ben.Fairless@righttoknow.org.au)  
**Cc:**  
**Sent:** 27/2/2014 at 6:45 PM  
**Received:** 27/2/2014 at 6:44 PM  
**Subject:** Your request for documents [SEC=UNCLASSIFIED]

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UNCLASSIFIED

Our references: FA 14/02/01093; ADF2014/6570

Dear Ben Fairless

Thank you for your prompt response and confirmation that the department can contact you at the right to know email address: foi+request-529-93665f99@righttoknow.org.au.

All correspondence including notices under the FOI Act and a decision on your request will be forwarded to the above email address.

Yours sincerely  
 Janelle

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Janelle Raineri  
 FOI Inbox Manager  
 FOI & Privacy Policy Section  
 Department of Immigration and Border Protection

Email: [foi@immi.gov.au](mailto:foi@immi.gov.au)

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

From: Ben Fairless [<mailto:foi+request-529-93665f99@righttoknow.org.au>]  
 Sent: Thursday, 27 February 2014 6:35 PM  
 To: FOI  
 Subject: TRIM: Re: Your request for documents [SEC=UNCLASSIFIED]

Dear Janelle,

I write in reference to your email in relation to my FOI request (Your Reference: FA 14/02/01093; ADF2014/6570). A copy of my request and responses to date can be found at [https://www.righttoknow.org.au/request/directions\\_from\\_ministers\\_in\\_rel\\_2](https://www.righttoknow.org.au/request/directions_from_ministers_in_rel_2)

I can confirm the RightToKnow email address is a valid email address to which notices can be sent.

In case you were not aware, RightToKnow provides a way for members of the public to submit FOI requests and respond to emails from agencies in relation to FOI requests. In addition, it also publishes the request, any correspondence between the requestor and the agency, and the final decision of the agency online in a searchable, easy to read format on the internet.

I would argue that the way the Right to Know website works would be no different to posting a copy of our correspondence on a website.

Other than the DIBP, I am not aware of a single Agency or Minister listed on Right to Know that has raised concerns in relation to s15(2)(b) of the Freedom of Information Act.

I respectfully request (as a user of RightToKnow, and not on behalf of its

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administrators or owners) that the Department cease raising concerns under s.15 (2) (b) of the Freedom of Information Act when it comes to Right to Know. It is the only agency that has done so to date.

If you have any questions, please let me know.

Yours sincerely,

Ben Fairless

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

UNCLASSIFIED

Our references: FA 14/02/01093; ADF2014/6570

Dear Ben Fairless

I am writing to you in response to your email dated 22 February 2014, purportedly under the Freedom of Information Act 1982 (Cth) and asking that the Department of Immigration and Border Protection provide you with a copy of the following document:

I request, under the Freedom of Information Act, documents (including, but not limited to, emails, letters or other notes to which the department has access) which reference requests, decisions or opinions by either the minister currently responsible for the Department or any other currently serving federal minister on how the department should handle Freedom of Information (FOI) requests.

The purpose of this email is to advise you that I consider the request may be invalid under the FOI Act. I will explain my reasons in full below.

Requirements of the FOI Act

The requirements for a valid FOI request are set out in section 15(2) of the Act, which provides that:

The request must:

(a) be in writing; and

(aa) state that the request is an application for the purposes of this Act; and

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(b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and

(c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

The Act envisages that an agency and the applicant will, where necessary and appropriate, engage in dialogue about the request. The Act also envisages that there may be instances when an agency will wish to send a formal legal notice to an applicant, for example, when the agency believes that it would be a substantial and unreasonable diversion of resources to process the request or intends to charge the applicant for processing the request. In addition, the Act provides applicants with review rights which are activated by the act of the agency 'notifying' the applicant of the decision.

In order to engage in this dialogue, the applicant must provide an address through which the applicant intends to be contactable. It should be an address through which the agency will be able to write to the applicant and receive a response to the communication. It must also be an address through which the agency can reasonably assume that legal notices will be received, read and responded to by the applicant. This requirement has been an element of a valid FOI request since the Act was first enacted in 1982.

Issues regarding your request

I am not satisfied that the email address you have provided meets the requirement of 'details of how notices under this Act may be sent to the applicant' (s.15(2) (b) of the Act). In particular, it does not appear to be an address to which the agency could send a 'notice'. The address you have provided appears to be an address for publication of correspondence on the internet.

Next steps

Please confirm by writing to [1][DIBP request email] that the email address you have provided is an address to which the Department can send you notices, by close of business Thursday 6 March 2014. The request will then be validated.

If you have not provided confirmation by that time, the request will be closed as invalid.

Yours sincerely

Janelle

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Freedom of Information Act 1982

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Janelle Raineri

FOI Inbox Manager

FOI & Privacy Policy Section  
Department of Immigration and Border Protection

Email: [2][DIBP request email]

UNCLASSIFIED

References

Visible links

- 1. mailto:[DIBP request email]
- 2. mailto:[DIBP request email]

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Please use this email address for all replies to this request:  
foi+request-529-93665f99@righttoknow.org.au

Write your response as plain text. Only send PDF documents as a last resort. Government guidelines make it clear that PDF is not an acceptable format for you to use in the delivery of government information.  
<https://www.righttoknow.org.au/help/officers#pdf>

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<https://www.righttoknow.org.au/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

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