



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA14/03/01378

File Number ADF2014/10573

Scope of request

** The administrative e-lodged nomination data for the 457 visa program for the following categories per nomination for the 2012-13 program year; application date, total remuneration, occupation, industry, state, nomination approval (yes/no).*

** The administrative e-lodged nomination data for the 457 visa program for the following categories per nomination for the 2011-12 program year; application date, total remuneration, occupation, industry, state, nomination approval (yes/no).*

** The administrative e-lodged nomination data for the 457 visa program for the following categories per nomination for the 2010-11 program year; application date, total remuneration, occupation, industry, state, nomination approval (yes/no).*

As stated during your email of 5 May 2014 you agreed to withdraw the part of your request surrounding the specific day and month dates a particular decision was made on the application.

As stated in my email of 5 May 2014 identifying the state was not optional for the purposes of the FOI request as there is no data cleanse that could produce this information.

Documents in scope

1. Electronic record – excel spreadsheet containing a data cleanse from departmental systems – containing 3 worksheets

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 files and/or documents (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government;
- The department's FOI handbook

people our business

Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

47F Public interest conditional exemptions—personal privacy

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) the extent to which the information is well known;*
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
 - (c) the availability of the information from publicly accessible sources;*
 - (d) any other matters that the agency or Minister considers relevant.*

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

The documents that are exempt, in part, under section 47F of the FOI Act contain personal information. The exemptions applied are vast and necessary for the protection of personal information relating to a large portion of clients to whom the department routinely service in accordance with the Migration Act 1958.

The document you seek identifies exact salaries of individuals involved within the 457 migration programme. The 457 programme is designed to address labour shortages with genuinely skilled overseas workers on a temporary basis where employers are unable to find an appropriately qualified Australian to fill the position. These workers can only be employed to fill positions in certain eligible skilled occupations which are noted on the Consolidated Sponsored Occupation List (CSOL).

The 457 programme is vast and does in fact involve a large number of individuals every financial year. The Government believes that the skilled and semi-skilled migration programme should be sufficiently robust to ensure that the employment opportunities of Australians must always be protected, whilst recognising that an appropriate and sustainable human capital strategy for Australia must be readily available to safeguard business from labour and skills shortages.

The document you seek surrounding the 457 programme embodies personal information which is both extremely specific and identifying. The fundamental factor prohibiting release of this information is that if disclosed, any skilled migrant whom began working within a specified year, within a specific industry (Construction for example) with a specified job description (Accountant for example), is going to essentially find their salary on the department's disclosure log. This provides numerous personal privacy issues when working in an industry whereby this individual's colleagues could reasonably identify their salary.

There is a real expectation that staff within the relevant industries specified will seek to obtain the salaries of their colleagues through this FOI request. The staff of these industries could reasonably identify their skilled migrant colleague's start year, narrow their search to solely identify their colleague's industry and job description, thus providing an illustration of the salaries their colleague resides in.

Furthermore, depending on working hour arrangements, a salary may be particularly low indicating a limited work commitment, further identifying such individuals. This would inadvertently narrow the salaries for workers of differing working hour arrangements to further identify particular individuals.

Another issue surrounding release is the fact there may be 50 or more entries for a particular industry and job description however these salaries are extremely similar (within a few hundred or 1 thousand dollars similar). In these instances it would be irrelevant to whom the skilled migrant is, their salary is being disclosed to at least a few hundred or 1 thousand dollars of what they earn. I find this a significant issue in protecting the personal privacy of these individuals.

There are other issues to consider, such as the uniqueness to some of the salaries within the document you have requested. Some of the salaries are unique in their own right for a particular industry and job description. This indicates seniority or a degree of experience within a particular industry and job description, further allowing the identification of particular skilled migrants. If there were 100 jobs with the same industry and job description for a particular year there may be 10 jobs which are being paid at a higher degree. The real issue here is that fellow staff members within these industries could reasonably identify these individuals with heightened experience or seniority within their workplace and have their salaries identified.

In many cases the document you have requested has numerous repetitive salaries grouped together for a specified industry and job description. As one example, there may be 100 entries for 'Construction' 'Accountant' and within that search perimeter there are 3 or more consecutive salaries at the same dollar figure. This would reasonably suggest that a particular employer has employed multiple staff within a skilled migrant nomination application which is common. These individuals would once again be easily identifiable within their respective fields by their work colleagues, irrespective of state they work in as the company may have had a shortage of one particular role and has suddenly filled those roles nationwide.

Notwithstanding the abovementioned factors contributing to the unreasonableness of release, there are many entries that are limited, such as the job description of CEO. Providing you such salaries of CEO's (or many other roles) that began work within a particular year which are limited and salaries that are incredibly unique, would be unreasonable. Such individuals have passed through the 457 visa stream with no expectation their salaries would end up on the department's website for the general public to peruse. I find the nature of the information being a salary is very personal to any individual and conveys a significant amount of personal information. The CEO job description is only one example of specific job descriptions that illustrate limited roles.

Having broadly addressed the numerous issues surrounding release of the document I'm inclined to explain how release of actual salaries was made so you may better understand how this was possible when considering the above factors.

The salaries released have been identified as mid-range salaries within particular industries and job descriptions in which the above mentioned factors are mitigated by excluding many of the salaries themselves. In some cases however there are extremely large amounts of entries for a specific job description and industry for a particular year although release of a moderate or high portion of these salaries would further lead to identifying individuals for the reasons explained within this letter.

I find the release of the exact salaries as requested under this particular FOI request is unreasonable on multiple levels. I had provided context and numerous emails to you to explain the unreasonableness of the release of exact salaries however you did wish to proceed with the scope originally provided, minus the day and month of the visa decision.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- there is a general public interest in making information held by the Government accessible to the public;
- the extent to which the information is not known by the public.

Arguments that against disclosure of the documents include:

- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy
- prejudice the fair treatment of individuals

The information contained within the identified document wholly relates to individuals other than you. The department is obliged to take action to prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight. I find that the vast amount of individuals subject to the 457 programme expect their personal information would remain confidential. In addition to this point, the amount of third party individuals who would need to be consulted prior to a release of their personal information being made would be tremendous. The information released to you under this request is not enough to identify an individual, thus leading to no formal third party consultation.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

Ashley Smith
Authorised decision maker
FOI and Privacy Policy Section
Ministerial, Executive and External Accountability Branch
Department of Immigration and Border Protection
Telephone (02) 6225 8037
Email foi@immi.gov.au

13 June 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA14/03/01378

File Number ADF2014/10573

1. Departmental File:

Sheet	Description	Decision	Legislation
1	Salaries	Released in part	S47F(1)
2	Salaries	Released in part	S47F(1)
3	Salaries	Released in part	S47F(1)

Specific salaries subject to exemption can be readily identified by using the worksheet filtering results option.