



1 June 2017

In reply please quote

FOI Request FA 17/04/00312
File Number ADF2017/38470

Dear [REDACTED]

Freedom of Information request – Release of documents

This letter refers to your Freedom of Information request received on 6 April 2017 seeking access under the *Freedom of Information Act 1982* (the Act) to the following:

1. *List the names of all entities, who are not individuals/sole traders, that were granted subclass 457 standard business sponsorship in the last 5 years;*
2. *Indicate which of the standard business sponsors are "Accredited Sponsors";*
3. *Expiry dates of the sponsorships listed above; and*
4. *Grant dates of all visas granted, if any, under the sponsorships listed above.*

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 terms of your request
- The *Freedom of Information Act 1982*;
- Departmental files identified;
- Consultations with relevant Departmental business areas; and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

Document in scope

Parts 1, 2 and 4

Section 17 of the FOI Act provides that where an agency can produce a written document containing the information in discrete form by the use of a computer, and the work required would not substantially and unreasonably divert resources of the agency from its other operations, the agency shall deal with the request as if it were a request for access to a written document so produced.

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce one document that is relevant to parts 1, 2 and 4 of your request.

Part 3

Section 24A provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document is in the Department's possession but cannot be found or does not exist.

No discrete document currently exists in the possession of the Department that contains the data you have sought in part 3 of your request. The Department is also not able to produce the data from its computer systems as the data is not captured by the Department in a way that could be reported on. As such, whilst the data you have requested may exist within the Department's computer systems, the work required to produce that data would interfere unreasonably with the operations of the Department. Access to the information you have requested is therefore refused under section 24A of the FOI Act.

Decision

The decision in relation to the document in the possession of the Department which fall within the scope of parts 1, 2 and 4 of your request is to release one document in part with deletions. The reasons for my decision are set out below.

Reasons for decision

Section 47E(d) – Public interest conditional exemption - operations of an agency

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Those operations include the management of various visa programs. Any prejudice to the effectiveness of the methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the methods and procedures used within those operations would result in the need for this Department to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Parts of the document that falls within the scope of your request contains the following information:

- Sponsor ABN
- Sponsorship Case ID (CID)
- Sponsor Name

The Sponsor CID is the Department's unique identifier, and if disclosed would adversely affect how the Department manage its sponsors nomination applications. Any third parties with access to the Sponsor CID would be able to lodge a nomination application and gain access to the Sponsor's details. Any third parties with access to the Sponsor's name or ABN would also be able to identify the business. This would result in the Department having to make a substantial change to the procedures it has in place in relation to those operations to avoid undermining the effectiveness of the Department to perform its visa management functions.

The disclosure of the names and ABN of sponsors would also prejudice the effectiveness of the Department's ability to manage its various visa programs. Individuals and businesses interact with the Department in relation to visa applications on the basis that they are providing their information to the Government for official purposes. Any precedent of disclosure of that information to any third parties without their consent could prejudice the effectiveness of the operations of the Department in the management of its visa programs, which are an integral part of its role of managing the security and integrity of Australia's borders.

There is also a protective element to my decision as I consider that the businesses and their employees could also be approached by members of public opposed to the idea of employing people on a Temporary Work (Skilled) visa (457 visa), and such unsolicited approaches could potentially deter them from undertaking such activities in the future. This would have the effect of undermining the confidence of the businesses and individuals in their interactions with the Department, which in turn could impact how the Department operates.

I am therefore satisfied that the information marked 's47E(d)' in the document is conditionally exempt under s.47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest. I have considered the public interest factors below.

Application of the 'public interest' test

A conditionally exempt document must be released under the FOI Act unless the release would be 'contrary to the public interest'. In assessing whether disclosure of conditionally exempt material is, on balance, contrary to the public interest, I have taken into account the Information Commissioner Guidelines as set out in section 11B(3) of the FOI Act.

In favour of disclosure, I acknowledge that there is:

- a general public interest in making information held by the Government accessible to the public;
- an expectation that Government spending should be open and accountable, relevantly the type of services being provided by the Department for managing temporary skill shortages in Australia; and
- the need for openness and accountability of the department's operations relevantly, delivering the 457 visa programme.

In favour of non-disclosure, the exempted information would:

- undermine the way the Department manage the 457 visa programme;
- adversely impact the Department's operation if management of businesses information expected to be confidential is made known to the public;
- affect the organisation to perform as efficiently if certain existing processes and procedures are made known to the public beyond a need to know basis; and
- incur unnecessary costs to change those current operational procedure.

On balance, I have decided that the public interest lies in not disclosing the material assessed as being substantially adverse to the Department's operations if businesses were to lose confidence in our management of the 457 visa programme if there information expected to be confidential were make known to the public. The documents are therefore exempted in part under s.47E(d) of the FOI Act.

Legislation

A copy of the FOI Act is available for your reference from www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal

Review Rights

Internal review

If you disagree with the decision, you have the right to apply for an internal review of the decision. If you wish to make a request for internal review this must be sent within 30 days of being notified of the decision. Where possible please attach reasons why you believe 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:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi.reviews@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Australian Information Commissioner for a review of the decision. You must apply in writing within 60 days of this notice. For further information about review rights under the FOI Act please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Authorised Decision Maker
Freedom of Information Section
Department of Immigration and Border Protection
Email foi@border.gov.au

Attachments

- Attachment A - Document released under the FOI Act