



Australian Government
Department of Immigration and Border Protection

Decision Record

Request Details

FOI Request: FA 13/11/00745

File Number: ADF2013/38290

Scope of Request

I would like to request under freedom of information laws any documents including correspondence to and from Garry Fleming First assistant secretary Migration and Citizenship Policy Division and to and from any other department regarding the "Agents of Concern/Authorised Recipients of Concern List A and List B" and concerns raised by migration agents/ lawyers etc. about the discovery that they were on that list. The time period is from October 24 until November 19, 2013 inclusive.

Documents in scope

The following identifies documents received and assessed by the FOI Section.

1. Departmental email trail dated 24 October 2013 – containing 2 folios
2. Departmental email trail dated 25 October 2013 with 4 attachments – containing 9 folios
3. Departmental email trail dated 25 October 2013 with 2 attachments – containing 6 folios
4. Departmental email trail dated 25 October 2013 – containing 5 folios
5. Departmental email trail dated 25 October 2013 with 1 attachment – containing 3 folios
6. Departmental email trail dated 25 October 2013 – containing 1 folio
7. Departmental email trail dated 4 November 2013 – containing 6 folios
8. Departmental email trail dated 13 November 2013 – containing 2 folios

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

My decision is to delete exempt or irrelevant material from the documents which fall within the scope of your request. A statement of reasons for my decision is below.

Information considered

In reaching my decision I have considered the following:

- The *Freedom of Information Act 1982*;
- the *FOI Guidelines* issued by the Australian Information Commissioner;
- Departmental documents (identified above); and
- Comments made by relevant third parties who were consulted in relation to their personal and/or business information.

Reasons for decision

I have considered the documents within the scope of your request and applied deletions and exemptions to documents as detailed in the Schedule of Documents. You should read the Schedule of Documents in conjunction with the deletions below. Relevant excerpts of the FOI Act are attached for your ease of reference.

Deletion of exempt or irrelevant material under section 22 of the FOI Act

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reasons for each of the deletions in the document (subsection 22(3) of the FOI Act).

Exempt material is deleted pursuant to subparagraph 22(1)(a)(i) and irrelevant material is deleted pursuant to subparagraph 22(1)(a)(ii) of the FOI Act.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

Conditionally exempt documents

The FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary to the public interest'.

The public interest test

Factors weighing in favour of release

In weighing up the public interest test, subsection 11B(3) of the FOI Act states that a decision maker must consider whether disclosure of the information would:

- (a) promote the objects of the Act; or*
- (b) inform debate on a matter of public importance; or*
- (c) promote effective oversight of public expenditure; or*
- (d) allow a person to access his or her personal information.*

The objects of the Act, set out in subsection 3(1) are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government

processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner (AIC) has issued Guidelines that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (subsection 11B(5) FOI Act refers).

The AIC has since issued Guidelines that contain a non-exhaustive list of factors that a decision maker must consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the Guidelines refers).

The elements that weigh against disclosure are:

Whether disclosure of the personal information could reasonably be expected to:

- (a) prejudice the protection of an individual's right to privacy, including where:*
 - i. the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
 - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) prejudice security, law enforcement, public health or public safety*
- (d) impede the administration of justice generally, including procedural fairness*
- (e) impede the administration of justice for an individual*
- (f) impede the protection of the environment*
- (g) impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) prejudice an agency's ability to obtain confidential information*
- (i) prejudice an agency's ability to obtain similar information in the future*
- (j) prejudice the competitive commercial activities of an agency*
- (k) harm the interests of an individual or group of individuals*
- (l) prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) prejudice the management function of an agency*
- (n) prejudice the effectiveness of testing or auditing procedures*

Application of conditional exemptions to your request

Public interest conditional exemptions – section 47F(1)—personal privacy

The documents that are exempt under section 47F(1) contain the personal information of a third party. In my view, release of this information would be an unreasonable release of third party personal information and would be contrary to the public interest.

I have considered a number of factors in order to determine whether or not the release of the third parties' personal information would be reasonable or not in the specific circumstances of the case.

Factors considered when applying the 'unreasonableness' test include:

- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.
- No purpose would be achieved by releasing the third party personal information. This weighs against the release being reasonable.
- The degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government. This weighs in favour of the release being reasonable.
- The current relevance of the information. This weighs against the release being reasonable.
- A third party has objected to their personal information being released.

In my view, when all circumstances are considered, the release of personal information would be 'unreasonable' in the circumstances as it would constitute an unreasonable invasion of a third parties' privacy.

The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary to the public interest'.

I am satisfied that the documents I have exempted under section 47F(1) contain personal information and the disclosure would be contrary to the public interest. When assessing the public interest test, I have considered:

Factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public.
- Disclosure may enhance the scrutiny of government decision making.
- The need for transparency of process.

I have considered other public interest factors; however, I do not consider that release of the third parties' personal information would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors against disclosure:

- Whether disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy;
- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy;
- Whether disclosure of the personal information could reasonably be expected to prejudice the department's ability to obtain similar information in the future.

On balance, I am satisfied that release of the personal information exempt within the documents would be 'contrary to the public interest' and is therefore exempt under section 47F(1) of the FOI Act. The factor against disclosure relating to the protection of an individual's right to privacy was given the most weight. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding the information.

Public interest conditional exemptions – section 47G(1)(a) --business

A document is conditionally exempt under section 47G(1)(a) if its release would, amongst other things, disclose information concerning a person's business affairs and the disclosure could be expected to affect the person adversely in those business affairs.

I have decided that the disclosure of this information would or could reasonably be expected to unreasonably affect a person and their business affairs. Disclosure would therefore be 'unreasonable'.

As discussed above, a conditionally exempt document must be released under the FOI Act unless the release would be 'contrary to the public interest'.

Factors favouring disclosure

I have considered each of the factors set out in subsection 11B(3) of the Act which were discussed above.

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against disclosure

As discussed previously, the AIC has issued Guidelines that contain a list of factors weighing against disclosure, which must be considered under subsection 11B(5) of the Act.

I consider that the following factors listed in subsection 11B(5) of the Act are relevant to the documents in question:

- whether disclosure of the business information could reasonably be expected to harm the interests of an individual or group of individuals;
- it is a core Government concern to maintain the integrity of the information it holds including information relating to the business, commercial and financial affairs of an organisation;
- disclosure may affect the profitability of the businesses involved;
- the department is obliged to take action to prevent the unreasonable disclosure of information that may be of commercial or financial value to an organisation; and
- the business concerned has objected to the release of its business information.

In my view the release of this information could be expected to damage or diminish the information of a commercial value and unreasonably adversely affect the lawful business of an organisation and, as such, is exempt under the provision of section 47G(1)(a) of the FOI Act.

Accordingly I have decided to exempt the documents shown in the schedule under the provision of section 47G(1)(a) of the FOI Act.

Public interest conditional exemptions- Section 47E(d)-certain operations of agencies

A document is ‘conditionally exempt’ under section 47E of the FOI Act if its release, amongst other things, would or could reasonably be expected to ‘have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.’

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this department. Disclosure would therefore be ‘unreasonable’.

As discussed above, a conditionally exempt document must be released under the FOI Act unless the release would be ‘contrary to the public interest’.

I am satisfied that the release of the material I have deleted as exempt under section 47E is conditionally exempt under section 47E(d) and that the disclosure of that material would be contrary to the public interest.

Factors favouring disclosure

I have considered the factors set out in subsection 11B(3) of the Act which were discussed above.

Although release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against disclosure

As discussed above, the AIC has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under subsection 11B(5) of the Act.

The elements that weigh against disclosure are:

Whether disclosure of the information could reasonably be expected to:

- reveal operating procedures, the release of which would require the department to change the way it operates;
- prejudice the department's visa processing (screening) procedures; and
- prejudice the operations of the department in preventing immigration fraud;
- prejudice the department's ability to obtain information; and
- provide an unfair advantage to future clients if the operations of the department are known.

On balance, I am satisfied that release of the information on the documents would be 'contrary to the public interest' and that the documents are exempt under section 47E of the FOI Act.

Release would result in the department having to continually change its processes at a cost to the department. I have given this the most weight.

Public interest conditional exemptions - Section 47C- deliberative processes

The documents I have exempted under section 47C are deliberative documents. They contain advice and recommendations prepared for the 'deliberative processes' of this department.

The 'deliberative processes' of the department are the thinking, reflecting, deliberating, consultation and recommendation that occur prior to a decision being made. They are in effect the department's *thinking processes*, which involve weighing up or evaluating considerations that may have a bearing on a course of action to be taken or a decision to be made. The documents relate to or reflect an opinion, advice, recommendation, consultation or deliberation which is part of, or for the purposes of, the department's 'deliberative process' in carrying out its functions.

It is my view that the information contained in the documents is not operational information or purely factual material.

Having formed this view I then considered whether release of the documents would be 'contrary to the public interest'.

Factors favouring disclosure

I have considered the factors set out in subsection 11B(3) of the Act which were discussed above.

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.


Factors weighing against disclosure

As discussed above, the AIC has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under subsection 11B(5) of the Act.

The elements that weigh against disclosure are:

- the operational requirements of the department to check the information provided to it by clients (in some cases, through and their migration agents);
- whether the department could effectively discharge its responsibilities if checking processes were not in place;
- whether the department could effectively discharge its responsibilities when processing visa applications from clients; and
- an unfair advantage could be gained by knowledge of how the checking processes were assessed.

I have given the possibility of the gain of an unfair advantage the most weight and am satisfied therefore that the release would be 'contrary to the public interest' and the documents are exempt under section 47C of the FOI Act.



Marianne Nolte-Crimp
FOI Case Officer
FOI & Privacy Policy Section
National Office
Department of Immigration and Border Protection

Telephone 02 6264 1757
Email foi@immi.gov.au

25 February 2014

Attachment

Relevant excerpts of the FOI Act

Relevant sections of the *Freedom of Information Act 1982*

FREEDOM OF INFORMATION ACT 1982 - SECT 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.

FREEDOM OF INFORMATION ACT 1982 - SECT 47C

Public interest conditional exemptions—deliberative processes

General rule

(1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth; or*
- (d) the Government of Norfolk Island.*

Exceptions

(2) *Deliberative matter does not include either of the following:*

- (a) operational information (see section 8A);*
- (b) purely factual material.*

Note: *An agency must publish its operational information (see section 8).*

(3) *This section does not apply to any of the following:*

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

FREEDOM OF INFORMATION ACT 1982 - SECT 47E***Public interest conditional exemptions--certain operations of agencies***

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

FREEDOM OF INFORMATION ACT 1982 - SECT 47F

Public interest conditional exemptions--personal privacy

General rule

(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.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

(4) Subsection (5) applies if:

(a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and

(b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

(a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and

(b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

"qualified person" means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;*
- (b) a psychiatrist;*
- (c) a psychologist;*
- (d) a counsellor;*
- (e) a social worker.*

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

FREEDOM OF INFORMATION ACT 1982 - SECT 47G

Public interest conditional exemptions--business

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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



Australian Government
Department of Immigration and Border Protection

SCHEDULE OF DOCUMENTS TO DECISION RECORD

Request Details

FOI Request: FA 13/11/00745

File Number: ADF2013/38290

1. Departmental email trail dated 24 October 2013 – containing 2 folios

Folio	Description	Decision	Legislation
1-2	Subject FW: Confidential Enquiry	Exempt in part	s.47F(1), s.47G(1)(a)
		Irrelevant in part	s.22(1)(a)(ii)

2. Departmental email trail dated 25 October 2013 – containing 9 folios

Folio	Description	Decision	Legislation
1-5	Subject RE: Confidential Enquiry	Exempt in part	s.47F(1), s.47G(1)(a)
		Irrelevant in part	s.22(1)(a)(ii)
6	Attachment: Letter from the Migration Review Tribunal dated 27 August 2013	Exempt in part	s.47F(1), s.47G(1)(a)
7	Attachment: Letter from the Migration Review Tribunal dated 27 August 2013.	Exempt in part	s.47F(1)
8	Attachment: Partner Program Risk Tiering Tool – UK820	Exempt in full	s.47F(1), s.47E(d), s.47C
9	Attachment: Migration Agents/Authorised Recipients of Concern	Exempt in full	s.47F(1), s.47G(1)(a) s.47E(d)

3. Departmental email trail dated 25 October 2013 – containing 6 folios

Folio	Description	Decision	Legislation
1-4	Subject FW: Confidential Enquiry	Exempt in part	s.47F(1), s.47G(1)(a)
		Irrelevant in part	s.22(1)(a)(ii)
5	Attachment: Partner Program Risk Tiering Tool – UK820	Exempt in full	s.47F(1), s.47E(d), s.47C
6	Attachment: Letter from the Migration Review Tribunal dated 27 August 2013	Exempt on part	s.47F(1)



Australian Government
Department of Immigration and Border Protection

4. Departmental email trail dated 25 October 2013 – containing 5 folios

Folio	Description	Decision	Legislation
1-5	Subject FW: Confidential Enquiry	Exempt in part	s.47F(1), s.47G(1)(a)
		Irrelevant in part	s.22(1)(a)(ii)

5. Departmental email trail dated 25 October 2013 – containing 3 folios

Folio	Description	Decision	Legislation
1-2	Subject FW: Partner risk tiering tool	Exempt in part	s.47F(1)
3	Attachment: Partner Program Risk Tiering Tool – UK820	Exempt in full	s.47E(d), s.47C

6. Departmental email trail dated 25 October 2013 – containing 1 folio

Folio	Description	Decision	Legislation
1	Subject FW: risk tiering	Exempt in part	s.47F(1)

7. Departmental email trail dated 4 November 2013 – containing 6 folios

Folio	Description	Decision	Legislation
1-6	Subject FW: Confidential Enquiry	Exempt in part	s.47F(1), s.47G(1)(a)
		Irrelevant in part	s.22(1)(a)(ii)

8. Departmental email trail dated 13 November 2013 – containing 2 folios

Folio	Description	Decision	Legislation
1-6	Subject FW: Confidential Enquiry	Exempt in part	s.47F(1), s.47G(1)(a)
		Irrelevant in part	s.22(1)(a)(ii)

Diana TRIONFI

From: Garry FLEMING
Sent: Thursday, 24 October 2013 8:13 PM
To: Diana TRIONFI; Linda ROSSITER
Cc: Richard JOHNSON
Subject: FW: Confidential Enquiry
Attachments: scan@immigrationsolutions.com.au_20131024_175915.pdf

Diana/Linda - I have asked ^{s. 47F(1)} for the FOI reference. In the meantime, grateful if you could see if you could look into this with appropriate sensitivity and advise. GF

Sent with Good (www.good.com)

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

From: s.47F(1), s.47G(1)(a)
Sent: Thursday, October 24, 2013 06:15 PM AUS Eastern Standard Time
To: Garry FLEMING
Subject: Confidential Enquiry

Dear Gary,

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

On another matter, I am attaching a document which was obtained via a freedom of information request on a client's matter. I believe this document was released to me in error. I am concerned that I would be placed on any list of concern. More particularly List B. I am truly astounded by this and would like an explanation. Please look into this matter for me and provide a response .

Many thanks

s. 47F(1)

s. 47F(1), s.47G(1)(a)

s.47G(1)(a)

Released by DIBP under the
Freedom of Information Act 1982

s.47G(1)(a)

Released by DIBP under the
Freedom of Information Act 1982

E-mail Message

From: s. 47F(1)
To: Garry FLEMING [SMTP:garry.fleming@immi.gov.au]
Cc: s.47F(1), s.47G(1)(a)
Sent: 25/10/2013 at 11:58 AM
Received: 25/10/2013 at 11:59 AM
Subject: RE: Confidential Enquiry

Attachments: image002.png
 image004.jpg
 image006.jpg
 image008.jpg
 image010.jpg
 image012.jpg
 Letter from MRT 29.08.13 (P1).pdf
 scan@s.47G(1)(a)_20131025_115012.pdf

Dear Mr Fleming,

As per s47F(1) request, please find enclosed a scanned copy of the "partner program risk tiering tool - UK 820" form, which seems to be a standard form used to determine the "level of scrutiny that should be applied to a case", as mentioned in the document.

Also enclosed is the cover letter received with the copy of the documents.

Please let us know should you require any further information to proceed on this matter.

Thank you.

Kind regards,

s. 47F(1)

HYPERLINK s. 47G(1)(a)

Released by DIBP under the
Freedom of Information Act 1982

s.47G(1)(a)

From: s47F(1)
Sent: Thursday, 24 October 2013 9:51 PM
To: Garry FLEMING
Cc: s. 47F(1)
Subject: Re: Confidential Enquiry

Dear Gary,

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

On the other matter, I will ask s. 47F(1) of my office to send you the FOI file request details tomorrow as I will be in Canberra.

I look forward to having this matter resolved expeditiously.

s47F(1)

Sent from my iPad

On Oct 24, 2013, at 8:11 PM, "Garry FLEMING" wrote:

s47F(1)

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

On the other matter, grateful if you would advise the FOI request involved... not

Released by DIBP under the
Freedom of Information Act 1982

sure I can track it down without it.

Garry

Sent with Good (HYPERLINK "<http://www.good.com>"www.good.com)

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

From: s47F(1) [HYPERLINK
"mailto:s.47F(1), s.47G(1)(a)"]

Sent: Thursday, October 24, 2013 06:15 PM AUS Eastern Standard Time

To: Garry FLEMING

Subject: Confidential Enquiry

Dear Gary,

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

On another matter, I am attaching a document which was obtained via a freedom of information request on a client's matter. I believe this document was released to me in error. I am concerned that I would be placed on any list of concern. More particularly List B. I am truly astounded by this and would like an explanation.

Please look into this matter for me and provide a response .

Many thanks

s47F(1)

s.47F(1), s.47G(1)(a)

HYPERLINK s.47G(1)(a)

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Freedom of Information Act 1982

s.47G(1)(a)

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Freedom of Information Act 1982

s.47G(1)(a)



Australian Government
Migration Review Tribunal

MRT case number: s. 47F(1)

27 August 2013

s.47F(1), s.47G(1)(a)

Dear s.47F(1)

ACCESS TO WRITTEN MATERIAL – FULL ACCESS – s. 47F(1)
s. 47F(1)

The tribunal has received a request for access to written material relating to the application for review made by s. 47F(1) of a decision to refuse to grant a Partner (Temporary) (Class UK) visa.

The enclosed documents are given to you as the authorised recipient of the applicant. As the authorised recipient, the tribunal is required to give you, instead of the applicant, any document that it would otherwise have given to the applicant.

By providing you with these documents, the tribunal is taken to have given the documents to the applicant. You should ensure that the applicant is informed of this letter as soon as possible.

If you have any questions about this letter, please contact me on the number listed below, or telephone the tribunal's national enquiry line on 1300 361 969. For language assistance, please contact the Translating and Interpreting Service (TIS) on 131 450.

Yours sincerely M
s. 47F(1)

Mark Binotto
TRIBUNAL OFFICER
Telephone: 02 9276 5231

Attachment
Letter to applicant



Australian Government
Migration Review Tribunal

MRT case number: s. 47F(1)

27 August 2013

s. 47F(1)
Dear

ACCESS TO WRITTEN MATERIAL – FULL ACCESS – s. 47F(1)
s. 47F(1)

I am writing regarding your request, received on 12 August 2013, for access to written material relating to your application for review of a decision to refuse to grant a Partner (Temporary) (Class UK) visa.

The written materials you requested are included in:

- Department of Immigration and Citizenship's file s. 47F(1)

Access to all of the above materials has been granted and copies are enclosed.

If you have any questions, please contact me on the number listed below, or telephone the tribunal's national enquiry line on 1300 361 969. For language assistance, please contact the Translating and Interpreting Service (TIS) on 131 450.

Yours sincerely
s. 47F(1)

Mark Binotto
TRIBUNAL OFFICER
Telephone: 02 9276 5231

Attachments
Materials released

s.47F(1),s.47G(1)(a),s.47E(d)

DIAC-IN-CONFIDENCE

Released by DIBP under the
Freedom of Information Act 1982

Diana TRIONFI

From: Garry FLEMING
Sent: Friday, 25 October 2013 12:09 PM
To: Diana TRIONFI; Linda ROSSITER; Richard JOHNSON
Subject: FW: Confidential Enquiry [SEC=UNCLASSIFIED]
Attachments: Letter from MRT 29.08.13 (P1).pdf; scan s.47G(1)(a) 115012.pdf _20131025_

UNCLASSIFIED

Diana/Richard – I'll pop down to have a bit of a chat about how we progress this.

Linda – Looks like it was a release of departmental material by the MRT; and it may have been done outside of the FOI context.

Garry Fleming
Acting Deputy Secretary
Policy and Programme Management Group
Department of Immigration and Border Protection
Telephone: (02) 6264 1234
Mobile: s. 47F(1)
Email: garry.fleming@immi.gov.au

UNCLASSIFIED

From: Vania Jacinto [mailto:Vania@immigrationsolutions.com.au]
Sent: Friday, 25 October 2013 11:58 AM
To: Garry FLEMING
Cc: s.47F(1)
Subject: RE: Confidential Enquiry

Dear Mr Fleming,

As per s.47F(1) request, please find enclosed a scanned copy of the "partner program risk tiering tool – s. 820" form, which seems to be a standard form used to determine the "level of scrutiny that should be applied to a case", as mentioned in the document.

Also enclosed is the cover letter received with the copy of the documents.

Please let us know should you require any further information to proceed on this matter.

Thank you.

Kind regards,

Released by DIBP under the
Freedom of Information Act 1982

s. 47F(1)

s.47G(1)(a)

From: s.47F(1)
Sent: Thursday, 24 October 2013 9:51 PM
To: Garry FLEMING
Cc: s. 47F(1)
Subject: Re: Confidential Enquiry

Dear Gary,

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

On the other matter, I will ask s. 47F(1) of my office to send you the FOI file request details tomorrow as I will be in Canberra.

I look forward to having this matter resolved expeditiously.

s.47F(1)

Sent from my iPad

On Oct 24, 2013, at 8:11 PM, "Garry FLEMING" <garry.fleming@immi.gov.au> wrote:

s.47F(1)

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

Released by DIBP under the
Freedom of Information Act 1982

On the other matter, grateful if you would advise the FOI request involved... not sure I can track it down without it.

Garry

Sent with Good (www.good.com)

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

From: s.47F(1), s.47G(1)(a)

Sent: Thursday, October 24, 2013 06:15 PM AUS Eastern Standard Time

To: Garry FLEMING

Subject: Confidential Enquiry

Dear Gary,

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

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s.47F(1)

s.47F(1), s.47G(1)(a)

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<image001.gif><image002.jpg>

s.47G(1)(a)

<image003.jpg><image004.jpg><image005.jpg><image006.jpg><image007.jpg>

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s.47C, s.47E(d), s.47F(1)

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Australian Government
Migration Review Tribunal

MRT case number: s. 47F(1)

27 August 2013

Dear s. 47F(1)

ACCESS TO WRITTEN MATERIAL – FULL ACCESS –s. 47F(1)
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Yours sincerely
s. 47F(1)

Mark Binotto
TRIBUNAL OFFICER
Telephone: 02 9276 5231

Attachments
Materials released

Diana TRIONFI

From: Linda ROSSITER
Sent: Friday, 25 October 2013 2:02 PM
To: Garry FLEMING; Diana TRIONFI; Richard JOHNSON
Subject: RE: Confidential Enquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Garry

Thanks for following up and agree it doesn't look like FOI. I've checked our system and the only FOI request we have for this client was in 2010.

Let me know if you need any further information.

Regards

Linda

Linda Rossiter
Director
FOI and Privacy Policy
Department of Immigration and Border Protection
Telephone: (02) 6264 1482
Mobile: s. 47F(1)

UNCLASSIFIED

From: Garry FLEMING
Sent: Friday, 25 October 2013 12:09 PM
To: Diana TRIONFI; Linda ROSSITER; Richard JOHNSON
Subject: FW: Confidential Enquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

Diana/Richard – I'll pop down to have a bit of a chat about how we progress this.

Linda – Looks like it was a release of departmental material by the MRT; and it may have been done outside of the FOI context.

Garry Fleming
Acting Deputy Secretary
Policy and Programme Management Group
Department of Immigration and Border Protection
Telephone: (02) 6264 1234
Mobile: s. 47F(1)
Email: garry.fleming@immi.gov.au

Released by DIBP under the
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UNCLASSIFIED

From: s. 47F(1)
Sent: Friday, 25 October 2013 11:58 AM
To: Garry FLEMING
Cc: s.47F(1)
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Dear Mr Fleming,

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Also enclosed is the cover letter received with the copy of the documents.

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Thank you.

Kind regards,

s. 47F(1)

s.47G(1)(a)

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Sent: Thursday, 24 October 2013 9:51 PM
To: Garry FLEMING
Cc: s. 47F(1)
Subject: Re: Confidential Enquiry

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Freedom of Information Act 1982

Dear Gary,

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

On the other matter, I will ask^{s. 47F(1)} of my office to send you the FOI file request details tomorrow as I will be in Canberra.

I look forward to having this matter resolved expeditiously.

s.47F(1)

Sent from my iPad

On Oct 24, 2013, at 8:11 PM, "Garry FLEMING" <garry.fleming@immi.gov.au> wrote:

s.47F(1)

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

On the other matter, grateful if you would advise the FOI request involved... not sure I can track it down without it.

Garry

Sent with Good (www.good.com)

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

From: s.47F(1), s.47G(1)(a)

Sent: Thursday, October 24, 2013 06:15 PM AUS Eastern Standard Time

To: Garry FLEMING

Subject: Confidential Enquiry

Dear Gary,

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

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Freedom of Information Act 1982

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Please look into this matter for me and provide a response .

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s.47F(1)

s.47F(1), s.47G(1)(a)

<image001.gif><image002.jpg>

s.47G(1)(a)

<image003.jpg><image004.jpg><image005.jpg><image006.jpg><image007.jpg>

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Freedom of Information Act 1982

Diana TRIONFI

From: Diana TRIONFI
Sent: Friday, 25 October 2013 4:01 PM
To: Garry FLEMING
Cc: Richard JOHNSON
Subject: FW: Partner risk tiering tool [SEC=UNCLASSIFIED]
Attachments: Risk Tiering Tool 2013-09.pdf

UNCLASSIFIED

Garry

Attached is an email from Rosemary Wilmot regarding the risk tiering tool. I will follow up with her on the lists A and B on the form.

diana

Diana Trionfi
Director
Migration Agents Policy Section
Visa Framework and Family Policy Branch
Department of Immigration and Border Protection

T: +61 (0)2 6198 7111
M: s. 47F(1)
E: diana.trionfi@immi.gov.au

UNCLASSIFIED

From: Rosemary WILMOT
Sent: Friday, 25 October 2013 3:34 PM
To: Diana TRIONFI
Cc: Angela D'SILVA; Louise WALTON; Michael KELLY; Susan LUCACEVICH
Subject: Partner risk tiering tool [SEC=UNCLASSIFIED]

UNCLASSIFIED

Dear Diana,

Please find attached the current version of the risk tiering tool used by Temporary Partner processing centres. There is no second page to this document.

The tool is a work management tool, used by the administration units when receipting applications, to determine where cases should work flow. Cases are streamed to junior or senior case officers depending on risk, complexity and sensitivity.

The page is completed by hand and pinned to a case file until it is allocated to a case officer who then removes and destroys the document. It is not a decision making tool.

I am advised that this document has had local variations made to it from time to time in the past if there are particular matters that need to be drawn to the attention of the admin staff or sensitive cases that need to be flagged for the managers' attention.

I am copying in the managers of the four Temporary Partner processing centres as a reminder to check that the risk tiering tool is being used and destroyed appropriately and is not attached to a case file.

Please let me know if you need further information.

regards

Rosemary Wilmot
Deputy Global Manager, Family Visas and
Director, Partner Migration Program
Department of Immigration and Border Protection
Telephone: (03) 8682 2394
Mobile: S. 47F(1)
Email: rosemary.wilmot@immi.gov.au

UNCLASSIFIED

Diana TRIONFI

From: Diana TRIONFI
Sent: Friday, 25 October 2013 4:53 PM
To: Garry FLEMING
Subject: risk tiering [SEC=UNOFFICIAL]

UNOFFICIAL

Garry

Spoke to Rosemary Wilmot and she looking into the origin or the lists.

diana

Diana Trionfi
Director
Migration Agents Policy Section
Visa Framework and Family Policy Branch
Department of Immigration and Border Protection

T: +61 (0)2 6198 7111
M: s. 47F(1)
E: diana.trionfi@immi.gov.au

UNOFFICIAL

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Freedom of Information Act 1982

Diana TRIONFI

From: Diana TRIONFI
Sent: Monday, 4 November 2013 6:39 PM
To: Garry FLEMING
Cc: Richard JOHNSON
Subject: FW: Confidential Enquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

Garry

I have been in contact with Rosemary Wilmot regarding the Partner Program Risk Tiering Tool. Her understanding is that the tool is still being used but that the once attached list A and B is no longer attached. Rosemary is still working on how point one on the tool is considered if there is no list.

I have also been in contact with Catherine Genn, A/g Director, Risk Tiering and Immigration Network section, she was unaware of this tool. I will be working more closely with Catherine in the future.

We have commenced an audit of our Safeguard profiles and the Agent of Interest comments on ICSE to ensure they are current.

I have made some comments under the questions below to assist with your response to Anne. Please let me know if you require more information.

Diana

1. when and how was this document created?

The document was originally created in the mid-2010.

2. was there independent evidence relied upon for the creation of this list?

The list were based on information available to the department.

3. Were the parties on this list given an opportunity to comment of any adverse information?

No, the information is confidential and informs the workflow of an application, the agent information is only one of 10 components.

4. How frequently was this list used as a tool in case assessment?

Never. The tool is a workflow tool which ensures that the visa processing officer assessing the visa application is at the appropriate level. It is not a decision making tool, the consideration of the application is not altered by the tool, only who will assess the application.

5. Was this list only used for Partner visas for did it operate across the whole of the Department?

Yes

6. Does DIBP know the extent of possible damage done to the agent's reputation and disadvantage in case assessment?

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All the information on the tool assist with workflow of a visa application, the information is not used in the assessment of that application. As is appropriate and lawful, the decision maker bases their final decision on the information provided in the visa application.

7. How long has this list been operational?

Since 2010.

8. Did DIBP have a process in place to regularly review the names on this list to make sure that information is current and accurate.

As required. The Migration Agents Section is working with the Risk Tiering unit in the department to ensure that all the information relating to agents within department systems is current.

Diana Trionfi
Director
Migration Agents Policy Section
Visa Framework and Family Policy Branch
Department of Immigration and Border Protection

T: +61 (0)2 6198 7111
M: s. 47F(1)
E: diana.trionfi@immi.gov.au

UNCLASSIFIED

From: Garry FLEMING
Sent: Tuesday, 29 October 2013 12:17 PM
To: Diana TRIONFI
Cc: Richard JOHNSON
Subject: FW: Confidential Enquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

All very good questions...

Garry Fleming
First Assistant Secretary
Migration and Citizenship Policy Division
Department of Immigration and Border Protection
Telephone: (02) 6264 1888
Mobile: s. 47F(1)
Email: garry.fleming@immi.gov.au

UNCLASSIFIED

From: s.47F(1), s.47G(1)(a)
Sent: Tuesday, 29 October 2013 12:11 PM

Released by DIBP under the
Freedom of Information Act 1982

To: Garry FLEMING

Subject: RE: Confidential Enquiry [SEC=UNCLASSIFIED]

Dear Gary,

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

On the other matter, it really does raise the following concerns to say the least:

1. when and how was this document created?
2. was there independent evidence relied upon for the creation of this list?
3. Were the parties on this list given an opportunity to comment of any adverse information?
4. How frequently was this list used as a tool in case assessment?
5. Was this list only used for Partner visas for did it operate across the whole of the Department?
6. Does DIBP know the extent of possible damage done to the agent's reputation and disadvantage in case assessment?
7. How long has this list been operational?
8. Did DIBP have a process in place to regularly review the names on this list to make sure that information is current and accurate.

These are just a few of my concerns however, I am sure that there are many others.

Look forward to your further comments and thank you for your prompt response.

s.47F(1)

s.47F(1), s.47G(1)(a)

s.47G(1)(a)

From: Garry FLEMING [<mailto:garry.fleming@immi.gov.au>]

Sent: Tuesday, 29 October 2013 11:50 AM

To: s.47F(1)

Cc: s. 47F(1)

Subject: RE: Confidential Enquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

s.47F(1)

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

On the other matter, I can confirm that I received the material. It certainly has raised a lot of questions that we are following up on. I hope to have a substantive explanation for you sorted out within the next few days.

Regards

Garry Fleming
First Assistant Secretary
Migration and Citizenship Policy Division
Department of Immigration and Border Protection
Telephone: (02) 6264 1888
Mobile: 0413 186 490
Email: s. 47F(1)

UNCLASSIFIED

From: s.47F(1), s.47G(1)(a)
Sent: Monday, 28 October 2013 12:26 PM
To: Garry FLEMING
Cc: s. 47F(1)
Subject: FW: Confidential Enquiry

Dear Gary,

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

On another matter, please advise how you are going with my enquiry. I arranged for s. 47F(1) to send you the material you required on Friday.

s.47F(1)

s.47F(1), s.47G(1)(a)

s.47G(1)(a)

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Freedom of Information Act 1982

s.47G(1)(a)

From: Garry FLEMING [<mailto:garry.fleming@immi.gov.au>]

Sent: Thursday, 24 October 2013 8:11 PM

To: s.47F(1)

Subject: RE: Confidential Enquiry

s.47F(1)

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

On the other matter, grateful if you would advise the FOI request involved... not sure I can track it down without it.

Garry

Sent with Good (www.good.com)

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

From: s.47F(1), s.47G(1)(a)

Sent: Thursday, October 24, 2013 06:15 PM AUS Eastern Standard Time

To: Garry FLEMING

Subject: Confidential Enquiry

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

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Many thanks

s.47F(1)

s.47F(1), s.47G(1)(a)

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Freedom of Information Act 1982

Anna PULCIANI

From: Garry FLEMING
Sent: Wednesday, 13 November 2013 5:23 PM
To: s.47F(1)
Subject: RE: Confidential Enquiry [SEC=UNCLASSIFIED]

UNCLASSIFIED

s.47F(1)

Apologies for the delay in getting back to you with a substantive response on this matter.

First of all, please let me assure you that the list of agents had no impact on case assessments nor on case officers' views of an agent's reputation. The risk scoring instrument was a tool used by administrative teams only to assist in allocating cases to case officers of particular classification levels and experience and it appears to have been used only in Partner processing.

Nevertheless, it is of concern to me that the list was being used without appropriate oversight and control to ensure accuracy and currency. Indeed, you should never have been on such a list... while you were 'flagged' on our processing system at one point, this was only as a mechanism to alert officers to a system error whereby the system was not recognising you as a registered migration agent. There was never any suggestion that you lacked integrity and I apologise on behalf of the department for any perception otherwise.

The list has been removed.

If the department uses an assessment of migration agents to risk tier cases, we will ensure that lists or ratings are accurate and appropriately maintained. Indeed, there may be an opportunity here for the notion we discussed of having 'Platinum Card' agents, whose cases are tiered towards low risk / lightest touch processing. I look forward to the department further developing that concept together with the migration advice industry and its peak bodies.

Garry Fleming
First Assistant Secretary
Migration and Citizenship Policy Division
Department of Immigration and Border Protection
Telephone: (02) 6264 1888
Mobile: s. 47F(1)
Email: garry.fleming@immi.gov.au

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UNCLASSIFIED