



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

In reply please quote:

FOI Request FA 14/03/00169

File Number ADF2014/7616

Scope of request

The KPMG audit conducted into the data breach that led to the inadvertent online disclosure of the personal details of almost 10,000 people held in detention

Document(s) in scope

1. Interim report provided by KPMG dated 28 February 2014 – containing 12 pages

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

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.

FREEDOM OF INFORMATION ACT 1982 - Section 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;*

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- c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth 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).

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the department's operations and that there is no overriding public interest in favour of disclosure.

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 procedures or methods for the conduct of tests, examinations or audits by an agency. Further to that, it would, in my opinion, prejudice the attainment of the objects of particular tests, examinations or audits conducted by the agency.

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

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- Inform debate on a matter of public importance;
- The need for openness and accountability of the department's operations; and
- The extent to which the information is known by the public.

On the other hand I considered the following in favour of non-disclosure:

- An unfair advantage could be gained by knowledge of the operations of the department.

Information contained in the report discusses detail regarding browsers that are capable of downloading the full document. These statements also reveal how the data can be accessed. Revealing how data can be accessed may adversely affect the department's operational imperative of limiting the impact of the privacy breach and containing the extent of the breach. It is my view the release of this information would have a substantial adverse effect on the conduct of operations in the department. Please note the exemptions applied as shown in the schedule under the provision on S47E(d) of the FOI Act.

FREEDOM OF INFORMATION ACT 1982 - Section 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 document that is exempt, in part, under section 47F of the FOI Act contains personal information.

Having formed the view that the document is of a kind to which section 47F does apply, I am required to consider whether disclosure of the document would be unreasonable. I took the following information into consideration:

- The information is not your personal information.
- Every person has the right to expect that their personal information will be securely maintained by the department.
- The information does not appear to be in the public forum.

On balance I believe it would be unreasonable to release the information redacted in the document.

Having formed the view that the document is of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the document 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;
- inform debate on a matter of public importance; and
- the need for openness and accountability of the department's operations.
- the extent to which the information is 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
- prejudice security, law enforcement, public health or safety

The information contained within the identified documents wholly relates to a person 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 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.



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13 February 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/03/00169

File Number ADF2014/7616

1. Departmental File:

| Folio | Description | Decision | Legislation |
|-------|------------------------|-----------------|----------------------|
| 1 | Interim Report [draft] | Exempt in part | s.47F(1) s.47E(d) |
| 2 | Interim Report [draft] | Exempt in part | s.47E(d) |
| 3-5 | Interim Report [draft] | Release in full | |
| 6-8 | Interim Report [draft] | Exempt in part | s.47F(1) s.47E(d) |
| 9-12 | Interim Report [draft] | Release in full | |



Australian Government

Department of Immigration and Border Protection

Attachment C

EXTRACT OF RELEVANT LEGISLATION

Conditionally exempt documents

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, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the personal 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 s.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 has issued Guidelines that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) FOI Act).

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).

The elements that weigh against disclosure are:

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

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).

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).



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Our ref Letter Michael Manthorpe
280214.docx

Contact Mark Leishman s. 47F(1)

28 February 2014

Draft

Dear Michael

I refer to the Management Initiated Review which commenced on 20 February 2014, under which KPMG Forensic was engaged to conduct a review into a privacy breach relating to refugee information held by the Department of Immigration and Border Protection ("the Department" or "DIBP"). The 'Immigration Detention and Community Statistics Summary', dated 31 January 2014, which was published on the Departments website, allowed access to source data that contained the personal details of approximately 10,000 refugees. This information was first published on 10 February 2014 with further additions posted subsequent to that date.

Our review has been undertaken through two work streams. One focussed on establishing the chronology of events leading to the publication and the second a technical examination of the data associated with the publication and the potential extent of access to that data. We have not undertaken any formal inquiry into whether the publication of the information actually amounts to a privacy breach, as by all accounts that is an assumed fact.

The purpose of this letter is to provide you with key findings from our review to date, by way of providing short answers to critical questions, with our full report to follow.

Q. What was the extent of potential access to the 'Immigration Detention and Community Statistics Summary', dated 31 January 2014 and therefore, the underlying personal data?

A. The potential data access and distribution is widespread. There were 123 "hits" on the document from 104 unique IP addresses (refer attachment A). s. 47E(d)
s. 47E(d)

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s. 47E(d)

Q. Can the personal data be tracked and recovered from those who potentially accessed it?

A. s. 47E(d)

Q. What steps can the Department take to manage the distribution of the data further?

A. s. 47E(d)

Q. How did the data become embedded in the 'Immigration Detention and Community Statistics Summary' dated 31 January 2014?

A. The data extract obtained to produce the analysis for the report contained the personal details of the refugees. Personal details were not removed prior to the analysis being performed. When the statistical information was transferred into the statistical report, it was done so in such a way that underlying data containing personal information of detainees was embedded in the report, which meant the information could be accessed despite not being visible on face value. Reviews of the document were primarily done on hard copy versions, rather than the actual electronic publication, which is unlikely to have detected the embedded data.

The overall process to produce and publish the document appears to have not conformed with the web publishing and governance intranet guidance, which covers development, review and publication procedures, nor the online style guide (ADD 2013/1703190 dated

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16 December 2013) which, although potentially ambiguous in its reference to meta data, sets out specific requirements for ensuring publications do not contain underlying data sets or personal information. The potential reasons contributing to the ultimate situation may include time pressures, technical ability, lack of knowledge of the formal guidelines, lack of appreciation of the effects of producing a graph in one form as compared to another form, unclear process etc..

Q. Is there any indication that the privacy breach may have been malicious or intentional?

A. From our work to date, we have not identified any indications that the publication of the underlying data was intentional or malicious.

Q. Do earlier versions of the same report contain the same exposure to the underlying data?

A. Our review of earlier versions did not identify the same issue, so it appears unique to the version dated 31 January 2014.

Q. Is the Department likely to be exposed to the risk of inadvertent publication of data through its other on-line publications?

A. Although earlier versions of this document did not contain the same link to the underlying data, the apparent limited knowledge of the process as set out in the web publishing and governance intranet guidance, on-line publication style guide and the process of reviewing and clearing publications in hard copy, creates a significant risk that other publications may not have been properly reviewed and published and therefore, would be at risk of having underlying data issues. The same would apply to any electronically transmitted information, not just on-line publishing.

Warranties and Disclaimer

This progress update has been prepared at the request of the Department of Immigration and Border Protection (the DIBP) for the purpose of providing the DIBP with a status update on preliminary observations on work performed to date. These documents must not be copied or otherwise distributed or transmitted to any person without the prior consent of KPMG.

We have prepared this document pursuant to the terms of reference set out in our Management Initiated Review, dated 24 February 2014, and the terms and conditions of the Deed of Standing Offer (DOSO) with KPMG, under which the DIBP has engaged KPMG to provide audit and Forensic services, and they are not to be used for any other purpose without our prior written consent. Accordingly, KPMG accepts no responsibility in any way whatsoever for the use of these documents for any purpose other than that for which they had been prepared.

28 February 2014

The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

These documents must not be shown, copied, provided, disseminated, given to or relied on by any other person or entity without our express written consent which may be withheld in our absolute discretion.

We have considered and relied upon information, which we believe to be reliable, complete and not misleading. Nothing in these documents should be taken to imply that we have verified any information supplied to us, or have in any way carried out an audit of any information supplied to us other than as expressly stated in this report. The statements and findings included in these documents are given in good faith, and in the belief that such statements and findings are not false or misleading.

These findings are based solely on the information provided to us during the course of our review to date. We reserve the right to amend any findings, if necessary, should any further information become available.

Yours sincerely

Mark Leishman
Representative

Appendix A - Document Distribution

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

| IP Address | Country | Notusuk Nunar | Likely Dniire | File Downloaded ? | Retention Risk |
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| | Anonymised | | | | NA |
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s. 47F(1), s. 47E(d)

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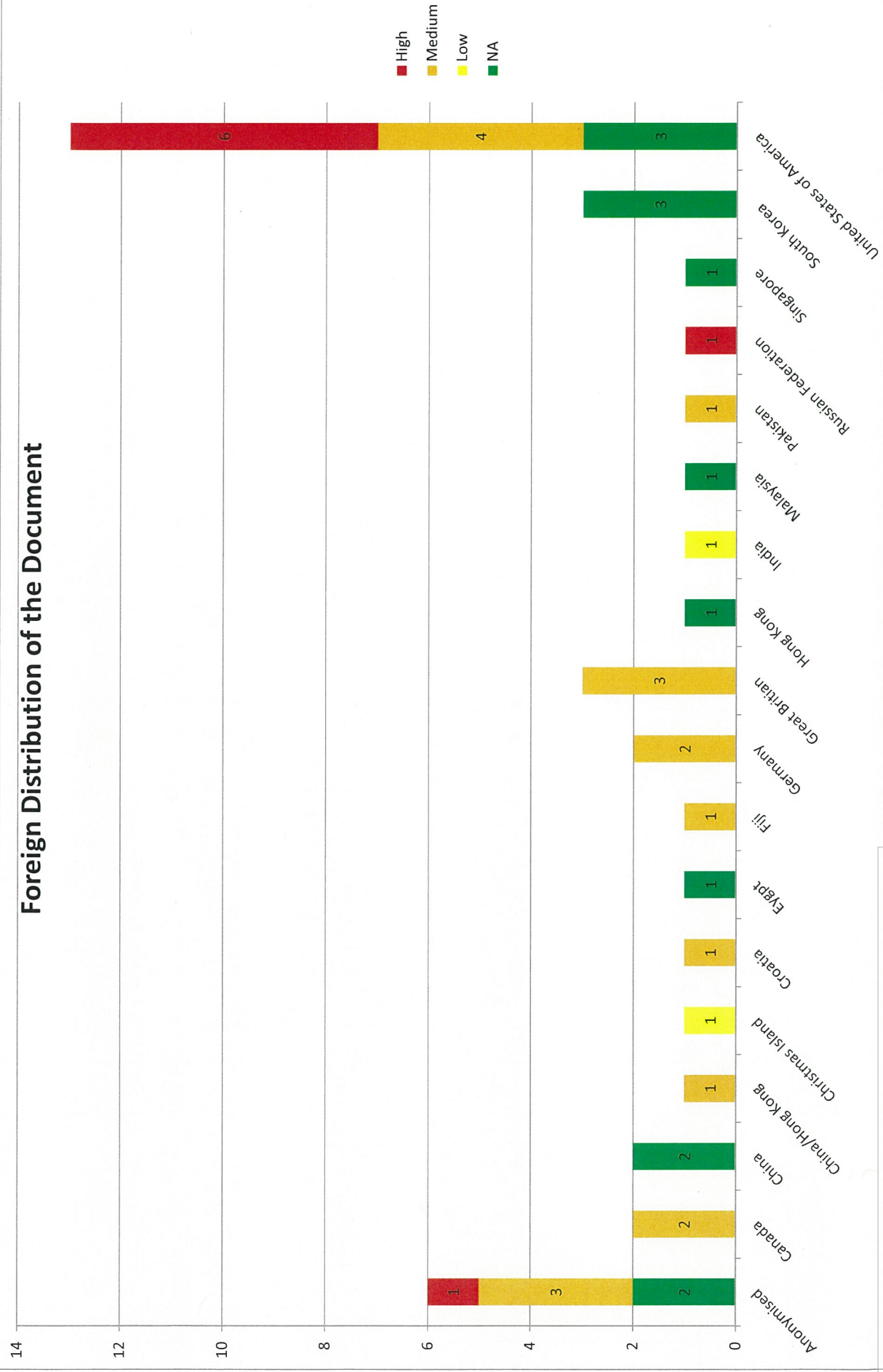
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s. 47F(1)

Appendix B - Foreign Document Distribution

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Foreign Distribution of the Document



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Appendix C - Global Document Distribution

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Global Distribution of the Document

