



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/02/00596
File Number ADF2014/41947

Scope of request

I'm seeking documents under FOI related to the decision to deem asylum seekers registered with the UNHCR in Indonesia ineligible for resettlement in Australia including briefs, advice, letters."

Please exclude emails from the scope and any duplicate documents.

Documents in scope

1. Talking Points – containing 23 folios.
2. Inter-Agency meeting Agenda – containing 15 folios.
3. Senate Estimates Brief – containing 7 folios
4. Media announcements – containing 2 folio
5. Ministerial Submission – containing 6 folios
6. National Security Council Brief – containing 6 folios
7. Cables – containing 21 folios

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); and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

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.

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.

The information exempt under s.22(1)(a)(ii) contains the names of staff who have provided documents for your FOI request. The name of the staff member who has submitted the document is irrelevant to the scope of your request. Further to that, some pages contain information regarding another country, which was not sought as part of the scope of your request.

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

I have exempted information contained in a Ministerial Submission under s.33(a)(i) as it contains details concerning the National Security Council and key proposals considered by the Council in relation to Operation Sovereign Borders. This information, if released, could impact on the security of the Commonwealth and is therefore exempt in full.

The information exempt under s.33(a)(iii) relates specifically to the Australian Government's relationship with the UNHCR, Indonesia and the broader refugee resettlement program. This is an important relationship for the Government and other countries involved in the refugee resettlement process. Disclosure of information relating to the management refugee resettlement and of that relationship with UNHCR and Indonesia has the potential to adversely affect the relationship of the Commonwealth with those international partners. Cables between government agencies, including those at international posts, concern the relationship with foreign countries and are refused in full on the basis that it could reasonably be expected to cause harm to the international relations of the Commonwealth if released.

Conditional exemption - certain operations of agencies - s.47E(d)

A document is 'conditionally exempt' under s.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 an agency.' A conditionally exempt document **must** be released under the FOI Act unless the release would be 'contrary to the public interest'.

Is the release contrary to the public interest?

As a result of the conditional exemptions applied, I must now consider the factors set out in the public interest test in s.11B(3) of the Act.

- (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.*

Factors favouring disclosure

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. The information exempt under s.47E(d) refers to operational processes of the department and is conditional exempt, as the disclosure of that material would be contrary to the public interest. Information exempted under 47E(d) relates to the operation of the humanitarian program, including assessment of capacity constraints and factors central to the management of refugees. It also relates to processes and procedures applied by staff offshore, the disclosure of which could compromise effective management of offshore posts.

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 s.11B(5) of the Act.

I consider that these factors are relevant to the documents in question:

The elements that weigh against disclosure are:

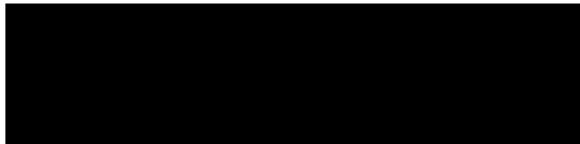
Whether disclosure of the personal information could reasonably be expected to:

- (c) prejudice security, law enforcement, public health or public safety*
- (k) harm the interests of an individual or group of individuals*
- (m) prejudice the management function of an agency*

Identification of staff, either Commonwealth or service providers, involved in key areas of public administration has potential to impact on their personal privacy and safety. This is particularly the case for those working in a highly political and emotive area of government policy. There are already current examples of individuals being identified and victimised as a consequence of their employment in this field. Further to that, the documents contain specific processes and procedures related to the refugee resettlement programme and the methods used to communicate this information to third parties (including foreign governments). Other documents contain information regarding processes and procedures relating to Operation Sovereign Borders. 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(d) of the FOI Act.

Having reached that view, s.22(2) of the FOI Act requires me to provide you with an edited copy of the documents, with the exempt information deleted under s.22(1)(b).



Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

26 November 2015



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/02/00596
File Number ADF2014/41947

1. Document Binder – 47 Folios for release in part

| Folio | Description | Decision | Legislation |
|-------|-----------------------------|-----------------|--------------------------|
| 1-3 | Talking Points | Release in full | |
| 4 | Talking Points | Release in part | s.33(a)(iii) s.47E(d) |
| 5-6 | Talking Points | Release in part | s.47E(d) |
| 7-8 | Talking Points | Release in full | |
| 9 | Talking Points | Release in part | s.33(a)(iii) s.47E(d) |
| 10 | Inter-Agency Meeting Agenda | Release in part | s.47E(d) |
| 11-13 | Inter-Agency Meeting Agenda | Release in part | s.33(a)(iii) s.47E(d) |
| 14-17 | Inter-Agency Meeting Agenda | Release in part | s.33(a)(iii) |
| 18-23 | Inter-Agency Meeting Agenda | Release in full | |
| 24 | Senate Estimates Brief | Release in part | s.47E(d) |
| 25 | Senate Estimates Brief | Release in full | |
| 26 | Senate Estimates Brief | Release in full | s.22(1)(a)(ii) |
| 27 | Senate Estimates Brief | Refused in full | s.22(1)(a)(ii) |
| 28 | Senate Estimates Brief | Release in part | s.33(a)(iii) s.47E(d) |
| 29 | Senate Estimates Brief | Release in full | s.22(1)(a)(ii) |
| 30 | Senate Estimates Brief | Refused in full | s.22(1)(a)(ii) |
| 31 | Media Release | Release in full | |
| 32-33 | Talking Points | Release in full | |
| 34 | Media Release | Release in full | |
| 35-36 | Talking Points | Release in full | |
| 37-38 | Talking Points | Release in part | s.47E(d) |
| 39-40 | Talking Points | Release in full | |
| 41 | Talking Points | Release in part | s.33(a)(iii) s.47E(d) |
| 42-44 | Talking Points | Release in full | |
| 45 | Talking Points | Release in part | s.33(a)(iii) s.47E(d) |
| 46 | Talking Points | Release in part | s.47E(d) |
| 47 | Inter-Agency Meeting Agenda | Release in full | |

2. Document Binder – XX Folios refused in full

| Folio | Description | Decision | Legislation |
|--------------|---------------------------------|-----------------|--|
| 1 – 6 | Ministerial Submission | Exempt in full | s.33(a)(i) s.33(a)(iii) s.47E(d) |
| 7 – 12 | National Security Council Brief | Exempt in full | s.33(a)(iii) s.47E(d) |
| 13 – 34 | Cables | Exempt in full | s.33(a)(iii) s.47E(d) |

Attachment C – Extract of relevant legislation

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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Scope

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 - (i) the nature and extent of the modification; and
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33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).

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).