



Attachment A

DECISION RECORD

Request Details

FOI Request: FA 14/10/01298
File Number: ADF2014/38647
IC Review: MR15/00062

Agreed scope of FOI request

'The final ministerial submission and attachments regarding the decision to no longer process any humanitarian visa applications from Ebola-affected countries, to cancel and refuse non-permanent or temporary visas held by people who haven't yet departed and plans put permanent visa holders into a 21-day quarantine period before departure.'

Documents in scope

The original decision dated 18 February 2015 granted access, in part, to 15 pages.

In reaching my decision, I have had regard to certain attachments to document 1 (the ministerial submission) which were previously found to be irrelevant to the scope of your request. I have therefore considered 33 pages.

Information considered

I am an authorised decision maker under section 23 of the *Freedom of Information Act 1982* (FOI Act) in accordance with arrangements approved by the Secretary of the Department of Immigration and Border Protection (the Department).

In reaching my decision, I have considered the following:

- the FOI Act;
- the documents relevant to your request
- advice from the relevant areas of the Department;
- the case appraisal in IC review – MR15/00062 from the Information Commissioner's office; and
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the Guidelines).

Summary of decision

I have decided to vary the decision of 18 February 2015 by:

- granting access to certain material previously withheld on the basis it was exempt from disclosure under the FOI Act;

- granting access to certain material that was previously considered to be irrelevant to the scope of your request.

Further, I have decided that parts of the ministerial submission are exempt from disclosure in accordance with sections 47C and 47E(d) of the FOI Act. Detailed reasons for my decision are set out below.

The precise parts of the document which I have decided to exempt in accordance with sections 47C and 47E(d) of the FOI Act are set out in the schedule at Attachment B.

Subsection 22(1)(a)(ii) – material irrelevant to the request

Subsection 22(1)(a)(ii) of the FOI Act allows an agency to delete irrelevant material from a document which is only partially relevant to an applicant's FOI request. I find that some documents relevant to your request contain material which is irrelevant to your request. I have deleted that material accordingly. These deletions are detailed in the schedule at Attachment B.

The material that has been deleted in accordance with subsection 22(1)(a)(ii) of the FOI Act comprises the direct contact details of Departmental staff.

Section 47C - conditional exemption - deliberative processes

Section 47C(1) of the FOI Act permits conditional exemption of a document if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency.

A 'deliberative process' has previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action' (see *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67).

The document which I consider to be conditionally exempt in part under s 47C of the FOI Act is a submission to the former Minister for Immigration and Border Protection. It contains advice and recommendations prepared by the Department for the former Minister on the options available to manage humanitarian applicants from countries in Africa affected by the Ebola Virus Disease (EVD).

The submission reveals the Department's 'thinking processes' in relation to specific options to manage the humanitarian applicants in question. It also reflects the Department's thinking in relation to the comparative strengths and weaknesses of those options. The process of deliberating on the available options for managing the humanitarian applicants in question is clearly connected to the Department's functions. The Department is responsible for the policy and delivery of Australia's Humanitarian Programme and more broadly, is responsible for advising the Minister about matters of portfolio responsibility.

I have considered whether the document contains 'operational information' (defined in section 8A of the FOI Act) or purely factual material. I am satisfied that the document does not contain such information.

The conditional exemption in section 47C of the FOI Act does not require 'identifiable harm' to result from disclosure in order for the exemption to apply (see the Guidelines at [6.60]). However, in my view, disclosure of the document in question could reasonably be expected to result in harm. This is discussed further in relation to the application of the public interest test (below).

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

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

I consider that parts of the ministerial submission are conditionally exempt in accordance with section 47E(d) of the FOI Act.

As I have described above in relation to the application of section 47C, the ministerial submission canvasses certain options and recommendations in relation to managing humanitarian applicants from countries in Africa affected by EVD. The ministerial submission was prepared in the course of the Department's function of providing advice and recommendations to the Minister on portfolio matters.

I am satisfied that disclosure of specific recommendations and advice to the former Minister on sensitive policy matters such as the response to the EVD, could reasonably be expected to undermine the capacity of the Department to provide comprehensive and fulsome briefings to the Minister on such matters in the future.

The Departmental officers involved in drafting documents such as ministerial briefings do so on the understanding that their advice and recommendations will not be disseminated more broadly than the Minister and others in the public service with a genuine 'need to know'. In my view it is reasonable to conclude that if specific advice and recommendations on sensitive policy issues is publicly released, Departmental officers may be more circumspect in the information they choose to provide to the Minister in written briefings in the future. Such a change is likely to adversely affect the capacity of the Department to provide comprehensive written advice to the Minister on the full range of options available on policy matters which could in turn, affect the quality of decision making.

For these reasons, I am satisfied that the ministerial submission is conditionally exempt in part under section 47E(d) of the FOI Act.

Public interest

Under subsection 11A(5) of the FOI Act I am required to provide access to a document that is conditionally exempt unless disclosure would be contrary to the public interest.

As the Guidelines state at paragraphs 6.8 - 6.9:

The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

I have considered the factors favouring access in subsection 11B(3) of the FOI Act and have not had regard to factors in subsection 11B(4). I consider that the factors outlined below, weigh for and against disclosure in these circumstances.

Factors in favour of disclosure:

I consider that the following factor weigh against disclosure of the document:

- disclosure would promote the objects of the FOI Act (s 3 FOI Act); and
- disclosure would contribute to the public's understanding of the options and recommendations presented to the former Minister for Immigration and Border Protection in relation to managing humanitarian applicant's from countries in Africa affected by EVD.

Factors against disclosure:

I consider that the following factor weighs against disclosure of the document:

- disclosure could reasonably be expected to have an adverse effect on the capacity of the Department to brief the Minister on sensitive matters relating to areas of portfolio responsibility in the future.

I have carefully considered those factors in favour and the factor against disclosure of the ministerial submission. Whilst I recognise that there is a public interest in the disclosure of those parts of the document that I have found to be conditionally exempt under sections 47C and 47E(d) of the FOI Act, I have formed the view that the risk of prejudice to the future ministerial briefing process outweighs the public interest factors in favour of disclosure. In reaching my decision in relation to the weight of the public interest, I have considered in particular, the fact that the advice and recommendations contained in the brief were prepared on an understanding that they would not be widely disseminated. I have also considered the real risk that disclosure of the material in question may inhibit Departmental officers in their written communications with the Minister in the future. I have also considered the fact that the policy options and recommendations that have been exempted in accordance with sections 47C and 47E(d), are options and recommendations that were not pursued. In my view, the disclosure of these policy options would not contribute in a meaningful way to the public's understanding of the arrangements that were ultimately implemented to respond to the humanitarian applicants in question.

Accordingly, I have decided to release the documents to you with deletions under subsection 22(1) of the FOI Act, on the grounds that the deleted material is exempt under sections 47C and 47E(d) of the FOI Act.


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

20 January 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 14/10/01298
File Number: ADF2014/38647
IC Review: MR15/00062

1. Ministerial Submission: Options to manage humanitarian applicants from countries in Africa affected by Ebola Virus Disease

Folio	Description	Decision	Legislation
1	Ministerial Submission	Release in part	s.47C
2	Ministerial Submission	Release in full	
3	Ministerial Submission	Release in part	s.47E(d)
4	Ministerial Submission	Release in part	s.47C s.47E(d)
5	Ministerial Submission	Release in full	
6	Ministerial Submission	Irrelevant to scope	s.22(1)(a)(ii)

2. Letters between the former Minister for Immigration and Border Protection and former Minister for Health

Folio	Description	Decision	Legislation
7-8	Letter from former Minister for Immigration and Border Protection to former Minister for Health	Release in full	
9-10	Letter from former Minister for Health to former Minister for Immigration and Border Protection	Release in full	

3. Ministerial Submission: Processes in place to check health of humanitarian visa holders arriving from countries affected by Ebola Virus Disease (including attachments)

Folio	Description	Decision	Legislation
11	Ministerial Submission	Release in full	
12	Ministerial Submission	Release in full	
13	Ministerial Submission	Release in full	
14	Ministerial Submission	Release in full	
15	Ministerial Submission	Irrelevant to scope	s.22(1)(a)(ii)

4. Attachment A Hot Issues Brief: Processes in place for health checks of refugee and humanitarian entrants from Ebola-affected areas

Folio	Description	Decision	Legislation
16	Hot Issues Brief	Release in full	

Folio	Description	Decision	Legislation
17	Hot Issues Brief	Release in full	

5. Letters between the former Minister for Immigration and Border Protection and State Premiers, Chief Minister of the Northern Territory and former Chief Minister of the Australian Capital Territory

Folio	Description	Decision	Legislation
18-19	Letter from former Minister for Immigration and Border Protection to former Premier of Queensland	Release in full	
20-21	Letter from former Minister for Immigration and Border Protection to former Premier of Victoria	Release in full	
22-23	Letter from former Minister for Immigration and Border Protection to Premier of New South Wales	Release in full	
24-25	Letter from former Minister for Immigration and Border Protection to Premier of South Australia	Release in full	
26-27	Letter from former Minister for Immigration and Border Protection to Premier of Western Australia	Release in full	
28-29	Letter from former Minister for Immigration and Border Protection to Premier of Tasmania	Release in full	
30-31	Letter from former Minister for Immigration and Border Protection to Chief Minister of Northern Territory	Release in full	
32-33	Letter from former Minister for Immigration and Border Protection to former Chief Minister of Australian Capital Territory	Release in full	