



Attachment A

DECISION RECORD

Request Details

FOI Request: FA 15/09/01840
File Number: ADF2015/50672

Original scope of request:

- *Copies of documents relating to the Australian Border Force publication and media protocols, in particular relating to the publication of press and or media releases;*
- *Copies of documents relating to Australian Border Force oversight and review mechanisms to assess the success and or failure of operation matters; and*
- *Copies of emails between officials of Australian Border Force and the Office of the Immigration Minister between 28 August and 2 September 2015 relating to Operation Fortitude.*

Revised Scope of request (agreed by the applicant 7 October 2015)

- *Copies of documents relating to the Australian Border Force publication and media protocols, in particular relating to the publication of press and or media releases.*
- *Copies of documents relating to Australian Border Force oversight and review mechanisms to assess the success and or failure of operation matters.*

Documents in scope

1. The Department identified three documents comprising 87 pages as being within the scope of your request. The documents are listed at Attachment B – Schedule of Documents.

Authority to make decision

2. 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

3. 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

4. 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.
5. 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(s) for each of the deletions in the document (s.22(3) of the FOI Act).
6. Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

Deletion of exempt material under s.22(1)(a)(i) of the FOI Act


7. The Schedule of Documents (Attachment B) and the documents released (Attachment D) detail the exemptions that have been applied. Exemptions were applied on the following ground:

Section 37(2)(b) – prejudice to law enforcement methods and procedures

8. I have exempted material in document 2, folio 23, under s.37(2)(b) of the FOI Act.
9. The exempted material comprises examples of actual Australian Border Force operational priorities, including specific commodities and geographic locations which have been, or continue to be, the subject of increased operational focus.
10. The release of this information would inform parties conducting, or intending to conduct, illegal importation or exportation activity of specific areas of focus of the Australian Border Force. The information would assist those parties by alerting them to illegal activities at greater risk of detection.
11. I therefore consider that the disclosure of this material could reasonably be expected to disclose lawful methods or procedures for detecting breaches of the law, the disclosure of which would, or would be reasonably likely to, reduce the effectiveness of those methods or procedures. As such, the material is exempted under s.37(2)(b) of the FOI Act.

Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act

12. I find that document 1, folio 2, contains some material which is irrelevant to your request. I have deleted that material accordingly under s.22(1)(a)(ii) of the FOI Act.
13. The material deleted is the names of two departmental non-senior executive service staff. The intended deletion of such information as irrelevant material was advised to you in the Department's acknowledgment of your request, sent to you on 1 October 2015.



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

21 March 2016

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 15/09/01840

File Number: ADF2015/50672

No.	Date of document	Pages	Description	Decision on release	Exemptions applied
1.	Undated (confirmed to be in use at time of request)	1-15	Media Operations Guidelines – Standard Operating Procedures	Released in full	n/a
2.	Undated	16-39	Australian Border Force – 2015-16 Governance Arrangements and Supporting Operational outputs	Released in part	s.37(2)(b)
3.	Undated	40-87	ABF Operational Planning Framework	Released in full	n/a

Attachment C – Extract of relevant legislation (FOI Act)

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:

- (i) under Division 2 of Part IV (exemptions); or
- (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

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.

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.

37 Documents affecting enforcement of law and protection of public safety

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
 - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
 - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;

- (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:
 - (a) witnesses; or
 - (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
 - (c) any other people who, for any other reason, need or may need, such protection.
- (3) In this section, **law** means law of the Commonwealth or of a State or Territory.