

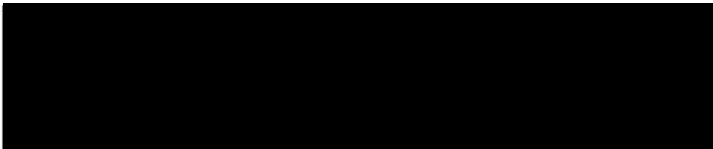


In reply please quote:

FOI Request: FA 16/04/01379

File Number: ADF2016/16643

16 May 2016



Dear [REDACTED]

I refer to your email dated 11 April 2016 in which you request access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

Scope of Request

You have requested access to the following documents held by the Department:

'all meeting minutes from the Citizenship Loss Board.'

This letter is to notify you of my decision on access to the documents subject to your request.

Charges

On 26 April 2016, the Department notified you of the estimated charges associated with processing this request in the amount of [REDACTED]. On 5 May 2016, you paid the charges in full.

Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

Decision on access

The Department has identified one document that falls within the scope of your request. This document was in the possession of Department on 11 April 2016 when your FOI request was received.

The decision in relation to the document in the possession of the Department which comes within the scope of your request is to release that document in part with deletions. The reasons for my decision are set out below.

Relevant material

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

Reasons for Decision

I am satisfied that I have been provided with all the documents that are relevant to your request. My reasoning in relation to the application of each section to particular information within the document is set out below.

1 Section 22 of the FOI Act – irrelevant to request

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 20 April 2016, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that part of the document would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

2 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33 of the FOI Act provided that a document is an exempt document if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

I consider that the disclosure of parts of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth. In particular, this has the ability to reveal methodology.

I have therefore decided that parts of the document are exempt from disclosure under Section 33(a)(i) of the FOI Act.

3 Section 47E of the FOI Act – Operations of Agencies

Section 47E(d) of the FOI Act 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.

The document contains contact details for the Secretariat of the Board. This Secretariat has responsibility for the administration of the Board. This contact information is not in the public domain and is not intended for use by the general public. I consider that the disclosure of this information could reasonably be expected to result in potential vexatious communications and general public inquiries to the Secretariat, which the Secretariat is not resourced to manage. Given the nature of the subject matter that the Board considers, I regard any diversion of resources from the Secretariat caused by such communication could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Accordingly, I have decided that part of the document is conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 4 below.

4 The public interest – section 11A of the FOI Act

As I have decided that part of the document is conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.*

Having regard to the above:

- I am satisfied that access to the document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.

- I consider that no insights into public expenditure will be provided through examination of the document.
- I am satisfied that you do not require access to the document in order to access your own personal information.

Disclosure of all aspects of the document would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information in the document:

- I consider that the disclosure of the part of the document that is conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice certain functions of the Department. I note that the Department has avenues in place for members of the public to contact where they have queries, complaints and comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that other areas within the Department are able to carry out their functions in an efficient and effective manner. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- access to the document could result in any person misinterpreting or misunderstanding the document;*
- 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;*
- access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

Legislation

I have attached an extract of the exemption provisions of the FOI Act for your information at **ATTACHMENT A**.

Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days. Applications for review should be sent to:

Freedom of Information Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

OR

By email to: foi@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Making a Complaint

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department in relation to your request.¹

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

Your enquiries to the Australian Information Commissioner can be directed to:

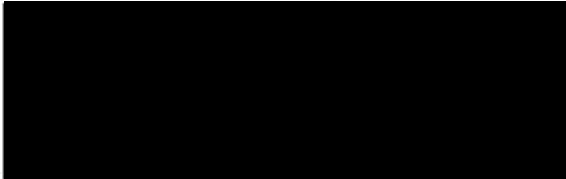
Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

¹ On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the Office of the Australian Information Commissioner (OAIC), has not yet been considered by the Senate. The OAIC therefore remains operational until further notice. Information on the OAIC public website advises that Information Commissioner reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

There is no particular form required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

Contact

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@border.gov.au.



Authorised Decision Maker
Department of Immigration and Border Protection

ATTACHMENT A

Relevant Legislation

Section 22 - Access to edited copies with exempt or irrelevant matter deleted

- (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.

Section 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;

...

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:

...

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

11B - Public interest exemptions—factors

- (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.