



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request: FA 15/10/01027  
File Number: ADF2015/57990

#### Scope of request

1. On 13 October 2015 you requested:

*the briefs prepared for incoming Chief Medical Officer and Surgeon General John Brayley and, separately, all correspondence between Dr Paul Alexander and Dr Brayley since the latter's appointment.*

2. On 13 April 2016 you agreed to exclude a cabinet document from the scope of the request, meaning that the scope was revised to the following:

1. *The following documents which were contained in the hard-copy briefing folder to the incoming Chief Medical Officer and Surgeon General Dr John Brayley:*
  - *Incoming Surgeon General Brief (with Onshore Health Key Statistics attachment)*
  - *Briefing Note- Incoming Surgeon General (Detention Assurance)*
  - *Supplementary Estimates Brief – Detention Assurance*
  - *Supplementary Estimates Brief – MCASD*
  - *Supplementary Estimates Brief – Bullying and Harassment*
  - *Supplementary Estimates Brief – Workplace Health and Safety*
  - *Supplementary Estimates Brief – Staff Mental health in Detention Centres*
  - *Establishment of CMO/Surgeon General Role - An outline of changes required to implement the Surgeon General role and consolidate health services across the Portfolio under the new Health Services and Policy Division*
  - *Medial Transfers Scenario document*
  - *'Scenario's' document*
2. *As well as correspondence between Dr Paul Alexander and Dr Brayley since the latter's appointment.*

### **Documents in scope**

3. There are eleven documents within the scope of your request. These documents are detailed at the Schedule of Documents (Attachment B).

### **Authority to make decision**

4. 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**

5. In reaching my decision, I have considered the following:
  - The *Freedom of Information Act 1982*;
  - The Departmental document identified above;
  - Consultations with relevant business areas; and
  - The Australian Information Commissioner's guidelines relating to access to documents held by government; and consultations with relevant Departmental business areas.

### **Reasons for decision**

6. 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.
7. 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 reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).
8. 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.

### **Exemptions applied to the document under s.22(1)(a)(i)**

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

### **Section 47C – Deliberative processes**

10. A document is conditionally exempt under s.47C(1) of the FOI Act if it includes deliberative matter. Deliberative matter is:

*...content that is in the nature of, or relating to either:*

- *an opinion, advice or recommendation that has been obtained, prepared or recorded*
- *a consultation or deliberation that has taken place*
- *in the course of, or for the purposes of, a deliberative process of the agency or Minister.*

(Paragraph 6.56, *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982*)

11. I am satisfied that document 8 contains deliberative matter. The relevant material in the document comprises discussion of options for the structuring of health service functions within the Department and includes recorded opinions and recommendations of Departmental officials regarding the merits of the options.

***Application of the 'public interest' test***

12. While I have found that the conditional exemption in s.47C(1) of the FOI Act applies to the information outlined in paragraph 11 above, s.11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.
13. In determining whether disclosure would be contrary to the public interest, s.11B(3) sets out a number of relevant factors which point in favour of release. These factors are:
- a) whether release would promote the objects of the FOI Act;
  - b) whether release would inform debate on a matter of public importance;
  - c) whether release would promote effective oversight of public expenditure; and
  - d) whether release would allow a person to access his or her own personal information.
14. I acknowledge that release of the information subject to conditional exemption under s.47C(1) would promote the objects of facilitating and promoting public access to information.
15. I do not consider that release of the information would inform debate on a matter of public importance.
16. I am not satisfied that the information would promote effective oversight of public expenditure or would allow a person to access his or her own personal information.
17. In contrast to the factors favouring release, I note that the material contains detailed discussion and opinions regarding Departmental operational matters. Release of this information could reasonably be expected to adversely impact the ability of the Department to record detailed analysis, opinions and recommendations in relation to its operations.
18. On balance, I have decided that the public interest lies in not disclosing the material assessed as deliberative matter in this instance. The document is therefore exempted in part under s.47C(1) of the FOI Act.

***Section 47E(d) – have a substantial adverse effect on the proper and efficient conduct of the operations of an agency***

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

20. The material exempted under s.47E(d) consists of:

- information regarding an ongoing tender process;
- detailed operational statistics (including breakdowns of self-harm incidents and medical transfers);
- details of sensitive operational processes; and
- details of internal reviews undertaken on sensitive operational matters.

21. This information deals with sensitive and/or complex operational matters and associated procedures.

22. If the information were to be released into the public domain it would impede the Department's ability to manage sensitive and complex operational matters and processes through opening such activities to an impractical level of scrutiny (noting that such operational matters are already open to scrutiny by a range of bodies including the Australian Parliament, the Commonwealth Ombudsman and the Australian Human Rights Commission).

23. On this basis, I am satisfied that release of the information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Department's operations. I am therefore satisfied that the material in issue is conditionally exempt under s.47E(d) of the Act.

*Application of the public interest test*

24. I acknowledge that release of the documents without the exemptions made under s.47E(d) would promote the objects of the FOI Act, through facilitating and promoting public access to information.

25. I also acknowledge that the release of the information would contribute to the public debate on matters such as detention procedures.

26. I do not consider that release of the information would promote effective oversight of public expenditure noting that this is already scrutinised by bodies as set out above, or allow a person to gain access to his or her own personal information.

27. In contrast, I consider that the ability of the Department to conduct ongoing and complex operations, and reviews of such operations, to be strongly in the public interest.

28. Taking into account the above matters, on balance, I consider that disclosure of the information in the documents exempted under s.47E(d) to be contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under s.47E(d) of the FOI Act. The exemptions have therefore been applied to the documents released.

**Section 47F – personal privacy**

29. Section 47F(1) of the Act provides:

*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).*

*The relevant documents contain 'personal information'*

30. I am satisfied that documents to which you have sought access contain 'personal information', being identifying information of third parties and detainees or transferees.

*Disclosure would involve the 'unreasonable disclosure of personal information'*

31. In assessing whether a particular disclosure would be 'unreasonable', s.47F(2) sets out a number of factors which the Department *must* consider.

32. These factors are:

- 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; and
- d) any other matters that the agency or Minister considers relevant.

33. The personal information in the documents is not well known or available in publicly accessible sources. As such, I consider that disclosure of the personal information in the document would be unreasonable. The personal information is therefore conditionally exempt from release, subject to a public interest test.

*Application of the public interest test*

34. While I acknowledge that release of the documents would promote the objects of facilitating and promoting public access to information, I consider that the release of individual identifying and personal information would make a negligible further contribution to public debate.

35. In contrast, I consider that the protection of the individuals' right to privacy should be given the upmost importance.

36. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the documents is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under s.47F of the FOI Act. The exemptions have therefore been applied to the documents released.

***Section 47G(1)(a) – business information which would or could adversely impact a person's business affairs***

37. The exempted information consists of the costs for discrete components of the overall contracts with International Health and Medical Services (IHMS), IHMS staffing breakdowns by type and information regarding IHMS performance.

38. This information is commercially sensitive to IHMS as it reveals information, not available in the public domain, which would allow assessment of its service models and associated revenues, as well as details its performance.

39. If released, this information could negatively impact IHMS's commercial activities or reduce its price competitiveness in tender processes for Departmental or Australian Government work.


40. I am therefore satisfied that the information specifically identified in the relevant documents is conditionally exempt under s.47(G)(1)(a) of the FOI Act.

*Application of the public interest test*

41. While I acknowledge that there is a public interest in the documents of the Department being made available to the public for the purpose of encouraging public debate and to promote oversight of the Department's activities, I do not consider that disclosure of the exempt material would facilitate these objects.
42. The scope of the redactions is limited to detailed staffing figures and expenditure for health services. In addition, I note that the estimated total values of the contracts between the Department and IHMS are already publically available on AusTender.
43. It is in the public interest that businesses providing services to Government have a degree of protection over commercially sensitive information.
44. In summary, I consider that release of the information exempted under s.47(G)(1)(a) in the relevant documents would be contrary to the public interest. As such, I have exempted the information from release.

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

45. I find that the documents relevant to your request contain some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the document released.
46. The material deleted under s.22(1)(a)(ii) comprises:
  - information relevant to retrieval of the information from systems for the purpose of managing this FOI request; and
  - direct contact details of Departmental staff and the names of non-Senior Executive Service staff (although position titles have been released). The intended deletion of this information was advised to you on 20 October 2015 and you did not raise any objections.



Authorised decision maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

7 July 2016





**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 15/10/01027  
File Number ADF2015/57990

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	Undated	1-6	Departmental Document (Incoming Surgeon General Brief and attachments)	Exempted in part	s.47E(d) s.47F(1) s.47G(1)(a)
2.	Undated	7-9	Departmental Document (Briefing Note – Incoming Surgeon General – Detention Assurance)	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
3.	October 2015	10-12	Departmental Document (Supplementary Estimates Brief – Detention Assurance)	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
4.	October 2015	13-15	Departmental Document (Supplementary Estimates Brief – Minister's Council on Asylum Seekers and Detention)	Irrelevant material	s.22(1)(a)(ii)
5.	October 2015	16-18	Departmental Document (Supplementary Estimates Brief – Bullying and Harassment)	Irrelevant material	s.22(1)(a)(ii)
6.	October 2015	19-20	Departmental Document (Supplementary Estimates Brief – Workplace Health and Safety)	Irrelevant material	s.22(1)(a)(ii)
7.	October 2015	21-22	Departmental Document (Supplementary Estimates Brief – Staff Mental Health in Detention Centres)	Irrelevant material	s.22(1)(a)(ii)

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
8.	Undated	23-67	Departmental Document (Establishment of CMO/Surgeon General Role)	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47C(1) s.47F(1)
9.	Undated	68-71	Departmental Document (Medical Transfers Scenario)	Exempted in full	s.47E(d)
10.	Undated	72-74	Departmental Document (Medical Scenarios)	Exempted in full	s.47E(d)
11.	13/10/2015	75	Departmental Email (Dr John Brayley to Dr Paul Alexander)	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47F(1)





## 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.

## 47C Public interest conditional exemptions- deliberative processes

### General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter ( **deliberative matter** ) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
  - (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or

- (d) the Government of Norfolk Island.

#### Exceptions

- (2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

#### **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).

#### **47G Public interest conditional exemptions—business**

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
  - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).