



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/12/01546
File Number ADF2015/69422

Scope of request

Documents in relation to the so-called Ministerial Working Group to help protect vulnerable foreign workers ("Ministerial Working Group") referred to in the Minister for Employment's media release dated 15 October 2015.

Please provide the following documents:

- > Submissions to the Minister in relation to the Ministerial Working Group or its work;*
- > A copy of the charter or terms of reference for the Ministerial Working Group (however described);*
- > Correspondence between the Minister and other Ministers about the Ministerial Working Group or its work;*
- > Agendas for meetings of the Ministerial Working Group; and*
- > Papers for meetings of the Ministerial Working Group.*

Authority to make decision

I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (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 terms of your request;
- the FOI Act;
- the Australian Information Commissioner's guidelines relating to access to documents held by government;
- Departmental documents, identified in the Schedule of Documents; and
- consultations with relevant business area/s.

Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of exempt or irrelevant material under s.22 of the FOI Act

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. 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). Exempt material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

Deletion of irrelevant material as applied to your FOI request

The documents contain information which is considered irrelevant to your request. Irrelevant information includes the name and direct contact details of Departmental staff below Senior Executive Service level.

Conditionally exempt documents

The documents I have considered fall under a 'conditional exemption' in the FOI Act.

I will explain what a 'conditionally exempt' document is before discussing the individual exemption I have applied.

The FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

The public interest test

Factors weighing in favour of release

In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker must consider whether disclosure of the information would:

- (a) promote the objects of the Act;
- (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.

The objects of the FOI Act, set out in s.3(1), are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities.

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines (IC Guidelines) that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the FOI Act).

The Information Commissioner has issued IC Guidelines that contain a **non-exhaustive** list of factors that a decision maker **must** consider when weighing whether it is contrary public interest to release 'conditionally exempt' information (paragraph 6.29 of the IC Guidelines).

The elements that weigh against disclosure are:

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

- (a) prejudice the protection of an individual's right to privacy, including where:*
 - i. the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
 - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) prejudice security, law enforcement, public health or public safety*
- (d) impede the administration of justice generally, including procedural fairness*
- (e) impede the administration of justice for an individual*
- (f) impede the protection of the environment*
- (g) impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) prejudice an agency's ability to obtain confidential information*
- (i) prejudice an agency's ability to obtain similar information in the future*
- (j) prejudice the competitive commercial activities of an agency*
- (k) harm the interests of an individual or group of individuals*
- (l) prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) prejudice the management function of an agency*
- (n) prejudice the effectiveness of testing or auditing procedures*

I will now consider each conditional exemption that I have applied in my decision.

Conditional Exemptions as applied to your request

Public interest conditional exemption – deliberative processes – s.47C of the FOI Act

A document is conditionally exempt under s.47C(1) of the FOI Act if its release would disclose deliberative matter including opinion, advice or recommendation that has been obtained, prepared or recorded, or the consultation/deliberation during a deliberative process.

I am satisfied that the documents contain deliberative matter. The relevant material in the documents include opinions of Departmental officers on options to appropriately address issues raised within the Ministerial Working Group on Protecting Vulnerable Visa Holders (Ministerial Working Group).

Application of the 'public interest' test

Although I have found that the information contained in the documents you have requested is conditionally exempt from release under s.47C, the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest.

Factors weighing in favour of release

I am satisfied that the release of the information would promote the objects of the FOI Act as it would provide access to information held by Government.

Noting previous media coverage regarding the Ministerial Working, I acknowledge that the information would be of some interest to the public.

I do not consider release of the exempted information would promote effective oversight of public expenditure, or allow a person to access his or her own personal information.

Factors weighing against release

The deliberative matter in the documents is detailed and relates to operational and inter-governmental affairs.

I consider that it is in the broader public interest for Departmental officers to be able to provide opinions and discuss such matters with a reasonable degree of confidentiality. I further consider that releasing deliberative matter relating to the Ministerial Working Group would disclose the Government's deliberation processes.

On balance, I consider that the public interest factors against release of the exempted information outweigh the public interest factors for release of the information. I therefore exempt in part, the documents from release, under s.47C(1) of the FOI Act.

Public interest conditional exemption – certain operations of agencies – s.47E of the FOI Act

For information to be exempt under s.47E(d), I must be satisfied that there is a reasonable expectation that its disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and that there is no overriding public interest in favour of disclosure.

Operational information

I am satisfied that the information contained in the documents, could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department and is accordingly exempt under s.47E(d) of the FOI Act. The release of the 'operational' information, being information received from the Australian Crime Commission (ACC) and measurable categories for investigations, could compromise the Department's ability to conduct specific investigations.

As set out above, a conditionally exempt document must be released under the FOI Act unless the release would be 'contrary to the public interest'.

Factors weighing in favour of release

I have considered the factors set out in s.11B(3) of the FOI Act.

Although release would promote the objectives of the FOI Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against release

In this case, I have considered the following:

- whether disclosure of the information could reasonably be expected to prejudice the operations of this Department;
- whether disclosure of the information could reasonably be expected to require the Department to change the way it operates;
- whether disclosure of the information could reasonably be expected to prejudice the function of the Department to manage its portfolio;
- whether disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government; and
- the need for openness and accountability of the Department's operations.

I am satisfied that releasing information about the way the Department operates, in particular measurable categories for investigations and information received from the ACC, would have a substantial adverse effect on the Department's operations.

On balance, I am satisfied that the release of the operational material in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the operational material in the documents is exempt from release under s.47E(d) of the FOI Act.

Public interest conditional exemption – business information – s.47G

A document is conditionally exempt under s.47G(1) of the FOI Act if its release would disclose information regarding the business; professional affairs of a person conducting their business; or the commercial/financial affairs of an organisation or undertaking; and the disclosure of the information would:

- reasonably be expected to unreasonably affect the person adversely (s.47G(1)(a))
- reasonably be expected to prejudice the future supply of information (s.47G(1)(b))

I note that a conditionally exempt document must be released under the FOI Act unless the release would be contrary to the public interest.

The documents subject to your request contain the business information of third party organisations; in particular their business names. This information is not information in the public domain and the Department is satisfied that the release of the business names would prejudice the future supply of information from the respective organisations. The release of such material would deter other organisations from actively engaging and working with the Department.

I am satisfied that the information identified in the documents is conditionally exempt under s.47G(1) of the FOI Act. I must now turn my mind to whether the information would be contrary to the public interest.

Factors weighing in favour of release

I have considered the factors set out in s.11B(3) of the FOI Act.

Although release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against release

Factors against release for information identified as conditionally exempt under s.47G(1) include:

- could reasonably be expected to prejudice an agency's ability to obtain confidential information; and
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

The third party organisations have the right to expect that the Department would take all reasonable steps to protect information concerning their business affairs. Having regard to these factors I am satisfied that, on balance, the release of the conditionally exempt information under s.47G(1) is 'contrary to the public interest'. I am satisfied that this information, as identified in the documents, is conditionally exempt.



Authorised decision maker
Department of Immigration and Border Protection

Email foi@border.gov.au

20/12/2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/12/01546
File Number ADF2015/69422

No.	Date of document	No. of pages	Description	Decision on release	
1.	20/10/2015	5	Information Paper – 20 October 2015 Meeting	s.47C(1)	Exempt in Part
2.	03/12/2015	7	Discussion Paper – Breaches of Workplace Law and Penalty Provisions: Record Keeping and Payslips	s.47C(1)	Exempt in Part
3.	Undated	3	Discussion Paper – Department of Employment and the Treasury	s.47C(1)	Exempt in Part
4.	20/10/2015	18	Meeting Brief – Working Group on Protecting Vulnerable Visa Holders – 20 October 2015	s.22(1)(a)(ii) s.47C(1)	Exempt in Part
5.	12/11/2015	24	Meeting Brief – Ministerial Working Group on protecting vulnerable visa holders – 12 November 2015	s.22(1)(a)(ii) s.47C(1) s.47E(d)	Exempt in Part
6.	03/12/2015	6	Meeting Brief – Ministerial Working Group – 3 December 2015	s.22(1)(a)(ii) s.47C(1) s.47E(d)	Exempt in Part
7.	Undated	1	Unsigned letter from Minister Dutton to Minister Cash		Release in Full
8.	Various	3	With Compliments slip and letters – the Hon Dr Peter Hendy MP to Minister O'Dwyer and Minister O'Dwyer to Prime Minister Turnbull		Release in Full
9.	02/10/2015	1	Letter from Minister Cash to Minister Keenan – "Ministerial Working Group on Protecting Vulnerable Visa Holders"		Release in Full

10.	02/11/2015	2	Letter from Minister Cash to Minister Dutton – “Ministerial Working Group on Protecting Vulnerable Visa Holders”	s.47C(1) Exempt in Part
11.	03/12/2015	3	Meeting Brief – Ministerial Working Group on Protecting Vulnerable Visa Holders	s.22(1)(a)(ii) Exempt in Part s.47C(1) s.47E(d)
12.	03/12/2015	2	Talking Points – Subject: Taskforce Cadena Update MWG 3/12/2015	s.47G(1)(b) Exempt in Part
13.	Undated	2	<u>Draft</u> invitation to become a member of the prescribed Taskforce Cadena	s.47C(1) Exempt in Part
14.	03/12/2015	1	DIBP email correspondence – Taskforce Cadena	s.22(1)(a)(ii) Edited Copy

Attachment C – Extract of relevant legislation

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).

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).