



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/06/00927
File Number ADF2016/25683

Scope of request

1. On 13 June 2016 you requested:

"Documents since 1 July 2015, specifically reports, ministerial briefing notes and attachments, Senate Estimates briefings/submission and attachments and related photos and CCTV/Video footage relating to cancellation of visa held by the Complex Cancellations Section of the Department.

Please limit to those cancellations which have been finalised.

If a briefing note and/or executive summary on individual cancellations exists, please limit to that document, along with related photos/Video footage."

2. On 21 June 2016 the scope of your request was revised with your agreement to:

1. *"A copy of any Senate Estimates Briefs (including any attachments) prepared after 1 July 2015 by the Complex Cancellations Section, which detail the cancellation of visas, where all associated reviews and/or legal proceedings have been finalised, excluding any personal information relating to third parties, but including the reasons for cancellation, the date the visa was cancelled, where the visa was cancelled and how it was cancelled.*
2. *If a visa referred to in these Senate Estimates Briefs was cancelled due to a reason that was captured on camera, being either a photo or CCTV footage, a copy of that photo or CCTV footage, excluding any personal information relating to third parties.*
 - a. *(On 11 July 2016 you confirmed that you were only seeking photos or videos that were solely relied upon to make a decision to cancel a visa).*
3. *The number of visas that have been cancelled by the Complex Cancellations Section between 1 July 2015 and the date of my request, being 13 June 2016."*
 - a. *(On 14 July 2016 you confirmed that statistics from the National Character Consideration Centre should also be included in the scope of your request).*

Documents in scope

3. One document has been identified as being within scope of your request. This is detailed at Attachment B – Schedule of Documents.

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 terms of your request;
 - the *Freedom of Information Act 1982*;
 - 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.

Decision

6. In relation to **Part One** of your request, the Department has undertaken searches to identify any documents that would be relevant. After consulting with relevant business areas I am satisfied that no documents (electronic or hard copy) are in possession of the Department that fall within the scope of this part of your request.
7. I note that although the Department holds Senate Estimate briefings which address cancellation activities, none of these briefings address cancellations *"where all associated reviews and/or legal proceedings have been finalised..."*
8. Under s.17(1) of the FOI Act, where a discrete document does not exist, the agency is to consider whether a document addressing the request could be produced through the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information. Advice from the relevant business area is that the data sought is not readily producible from systems and would require significant and complex manual analysis of individual cancellation records to obtain. I consider that production of the data from systems would be an unreasonable diversion of the Department's resources.
9. Therefore, I am refusing **Part One** of your request under s.24A(1) of the Act on the grounds that the agency has taken all reasonable steps to find the requested documents and I am satisfied the documents you have requested do not exist.
10. In relation to **Part Two** of your request the Department has undertaken searches to identify any documents that would be relevant to this part of your request. I am satisfied that there were no visas cancelled solely as a result of a reason that was captured on camera, being a photo or 'closed-circuit television' (CCTV) footage. I am therefore satisfied that the Department has no documents to produce in relation to this part of your request and access is refused under s.24A(1) of the FOI Act.
11. In relation to **Part Three** of your request, the Department has identified one document which partly addresses this part of your request.
12. 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.

13. 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).
14. 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

15. Exemptions were applied to the document on the following grounds:

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

16. 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
17. The material exempted under s.47E(d) consists of operational email addresses that are not available in the public domain. Release of this information could have the potential to impede the operations of the Department if the addresses were to be targeted with malicious emails or spam.
18. 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

19. 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.
20. I do not consider that release of the information would inform debate on a matter of public importance, promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
21. In contrast, I consider that the ability of the Department to utilise email addresses which are not at risk of being maliciously targeted to be in the public interest.
22. 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 document released.

47F(1) – Personal privacy

23. 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'

24. I am satisfied that the documents to which you have sought access contain 'personal information', being personal identifiers and the private details of persons whose visas have been cancelled by the Department.

Disclosure would involve the 'unreasonable disclosure of personal information'

25. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.
26. 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.
27. The 'Character Dashboard – July 2016' report contains statistical information regarding the alleged criminal offence that led to the persons' visa cancellation, which is further broken down by the persons' nationality and state of residence. I consider that individuals may be identifiable due to the low numbers of statistics recorded in the document, for example, one of the categories '*kidnapping*' contains only one person of a particular nationality which I consider would make this person easily identifiable by utilising additional information available in the public domain.
28. Many of the other crime categories also have low volumes such as the example above and I consider that the persons listed in these crime categories would also be identifiable.
29. In addition, the visa cancellation information contained in this document is not available from publicly accessible sources.
30. As such, I consider that disclosure of the personal information in the document would be unreasonable. It is therefore conditionally exempt from release, subject to a public interest test.

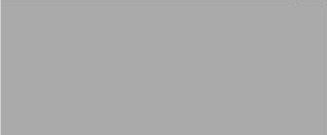
Application of the 'public interest' test

31. While I have found that the conditional exemption in s.47F(1) of the FOI Act applies to the information outlined 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.
32. In determining whether disclosure would be contrary to the public interest, section 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.

33. I acknowledge that release of the document without the exemptions made under s.47F(1) would promote the objects of the FOI Act, through facilitating and promoting public access to information.
34. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
35. In contrast, I consider that the protection of the individuals' right to privacy should be given the utmost importance.
36. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the document is contrary to the public interest. Accordingly, I have decided that the documents are exempted in part under s.47F(1) of the FOI Act.

Deletion of irrelevant material

37. The material deleted under section 22(1)(a)(ii) as irrelevant material includes any information not relevant to the scope of your request, being:
- character cancellation data which does not cover broader periods of time (for example, being only for a single month);
 - an analysis of specific parts of the cancellation caseload rather than broader cancellation statistics;
 - any information relating to the forwarding or printing of documents, where such action was taken by the Department for the purpose of processing this FOI request.



Director, Complex Cancellations
Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

21/10/2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 16/06/00927

No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	July 2016	1-4	Character Dashboard – July 2016	Released in part	s.47E(d) s.47F(1)
				Released with irrelevant information deleted	s.22(1)(a)(ii)

Attachment C – Extract of relevant legislation

Section 11A – 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.

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.

Section 17 - Requests involving use of computers etc.

- (1) Where:
 - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

- (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

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.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

Section 47E – 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.