



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/02/00602

File Number ADF2017/21530

Original scope of request

- 1) On 15 February 2017 you requested:

The review of IHMS working with children checks referred to in the departmental review of allegations about IHMS following Guardian Australia's reports in 2015

Documents in scope

- 2) The Department has located one document within scope, comprising seven pages, as detailed in Attachment B – Schedule of Documents.

Authority to make decision

- 3) 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

- 4) In reaching my decision, I have considered the following:
- The *Freedom of Information Act 1982*;
 - Consultations with relevant business areas and the relevant service provider, IHMS; and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Decision

- 5) I have decided to release the document in part.

Exemptions applied

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

- 6) Section 47E(d) provides that a document is conditionally exempt if its disclosure under the FOI 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.

- 7) The parts of the document conditionally exempted under s.47E(d) are the outcomes of a Departmental audit of service provider (IHMS) clinician personnel files, conducted during November 2015.
- 8) This information shows IHMS's degree of compliance with contractual requirements around record keeping for IHMS clinicians. In particular, whether IHMS clinicians have undertaken required training and clearance checks and whether evidence that this has occurred is held on the clinicians' personnel files.
- 9) This information is sensitive performance information and if released, I consider the Department's operations in respect of monitoring and addressing service provider performance would be significantly adversely impacted.
- 10) Release of such information into the public domain would adversely impact the future free exchange of service provider performance measures and Departmental assessments of service provider performance, due to concerns that the information would be released to the public. It is essential that the Department be able to conduct performance assessments of service providers with a degree of confidentiality.
- 11) I find this adverse effect to be serious. Therefore, I am satisfied that the material in issue is conditionally exempt in full under s.47E(d) of the FOI Act.

Application of the 'public interest' test

- 12) While I have found that the conditional exemption in s.47E(d) 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.
- 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 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.
- 15) I consider that the release of the information would make a negligible further contribution to public debate. Further, it would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
- 16) In contrast, I consider the ability of the Department to have effective working relationships with service providers, where both the Department and the service providers are able to share and discuss contractual obligations and performance, to be strongly in the public interest.
- 17) Taking into account the above matters, on balance, I consider that disclosure of the information in the document exempted under s.47E(d) to be contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47E(d) of the FOI Act. The exemption has therefore been applied to the document.

47G Public interest conditional exemptions — business

- 18) 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.
- 19) After consulting with the relevant service provider, IHMS, I am satisfied that parts of Document 1 contain performance information which is sensitive commercial information and should therefore be exempt from disclosure under 47G. The information also goes into detail regarding IHMS' processes and procedures, including what reports IHMS can generate and its disclosure would significantly disadvantage IHMS in its competitive business activities.

Application of the 'public interest' test

- 20) I acknowledge that release of the document without the exemptions made under s.47G(1)(a) would promote the objects of the FOI Act, through facilitating and promoting public access to information.
- 21) I consider that the release of the information would make a negligible further contribution to public debate. Further, it would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
- 22) In contrast, I consider that release of sensitive commercial information, including performance information, would be to the detriment of the Department's service provider IHMS.
- 23) Taking into account the above matters, on balance, I consider that disclosure of the information in the document exempted under s.47G(1)(a) to be contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47G(1)(a) of the FOI Act. The exemption has therefore been applied to the document.
- 24) I note that application of these exemptions does not indicate whether or not the service provider met the audit performance standards in the report.



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

18 May 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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File Number ADF2017/21530

No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	12/2015	1-7	Clinician Staff Records Audit	Exempt in part	s.47E(d) s.47G(1)(a)