



1 November 2017

In reply please quote:

FOI Request: FA 17/08/00517

File Number: ADF2017/86366

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 18 June 2017, the Minister's Office received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act). The request is more closely associated with the functions of the Department of Immigration and Border Protection (the Department) and your request was transferred to this Department on 11 August 2017.

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

All talking points or similar documents provided to the Minister regarding immigration and terrorism cases in the Victorian courts since 1 January this year.

2 Authority to make decision

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 records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from relevant business areas
- the Department's guidance material on the FOI Act

4 Documents in scope of request

The Department has identified seven documents as falling within the scope of your request. These documents were in the possession of the Department on 18 June 2017 when your request was received.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release seven documents in part with exemptions applied.

6 Reasons for Decision

For the reasons set out below, I have exempted certain information in the documents.

6.1 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 15 August 2017, 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 parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

6.2 Section 22 of the FOI Act – deletion of exempt material

I have decided to prepare an edited copy of the documents. The grounds upon which the edited copies of these documents have been prepared are set out in the Schedule of Documents.

6.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act permits conditional exemption of a document if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency. 'Deliberative processes' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

I consider that Document 7 contains opinions and deliberations prepared or recorded in the course of developing background information in relation to court proceedings.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

I have decided that the information is conditionally exempt under section 47C 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 below

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

As I have decided that parts of the documents are 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 documents would promote the objects of the FOI Act.
- I consider that the release of the information would make a negligible further contribution to public debate.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of all aspects of the documents 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 documents.

Disclosure of the conditionally exempt information under section 47C could reasonably be expected to prejudice the ability of the Department to manage future deliberations in relation to the development of background information in relation to court proceedings. This is a factor which I consider strongly weighs 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.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 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:

By email to: foi.reviews@border.gov.au

OR

By mail to:
Freedom of Information Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

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>.

9 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

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

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to 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.

10 Contacting the FOI Section

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



1.11.17

Authorised decision maker
Freedom of Information Section
FOI, Privacy and Records Management Branch
Corporate Services Division
Department of Immigration and Border Protection



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 17/08/00517
File Number ADF2017/86366

No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	24 April 2017	1-2	Media enquiry	Irrelevant material deleted	s.22(1)(a)(ii)
2.	13 June 2017	3-4	Email	Irrelevant material deleted	s.22(1)(a)(ii)
3.	13 June 2017	5-7	Email	Irrelevant material deleted	s.22(1)(a)(ii)
4.	13 June 2017	8-12	Email and attachment	Irrelevant material deleted	s.22(1)(a)(ii)
5.	13 June 2017	13-18	Email and attachment	Irrelevant material deleted	s.22(1)(a)(ii)
6.	14 June 2017	19-25	Email and attachment	Irrelevant material deleted	s.22(1)(a)(ii)
7.	14 June 2017	26-33	Email and attachment	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47C(1)