



08 December 2017

**In reply please quote:**

FOI Request FA 15/02/00981  
File Number ADF2015/6180



Dear 

**Freedom of Information request**

I refer your request received on 16 February 2015 seeking access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act) to:

**1. Scope of request**

On 16 February 2015 you sought access under the *Freedom of Information Act 1982* (the FOI Act) to:

*A copy of the 2007 internal Department of Immigration report entitled: 'Student Visas: Fraud, malpractice and error in the international education sector'. To assist in locating the document, it runs to 46 pages and is dated 1 October 2007.*

**2. Authority to make decision**

I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (FOI Act) to make decisions with respect to requests to access documents or to amend or annotate Departmental records.

**3. Information considered**

In reaching my decision, I have considered the following:

- The terms of your request
- The *Freedom of Information Act 1982*
- Departmental files identified in the covering letter
- The Australian Information Commissioner's guidelines relating to access to documents held by government (the FOI guidelines)
- Consultation with relevant business areas in the Department
- Consultation with relevant Government stakeholders

#### **4. Documents in scope of request**

The Department has identified one document relevant to your request, being a document titled *'Student Visas: Fraud, malpractice and error in the international education sector - Interim Report on Risk'*.

#### **5. Decision**

I have decided to release the document to you in part with exempt material deleted.

#### **6. Reasons for decision**

##### **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.

The Department's current 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 document 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 document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

##### **6.2 Section 33 Documents affecting national security, defence or international relations**

Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth.

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.

The information which has been marked '33(a)(iii)' in the document contains information concerning joint security arrangements between the Australian Government and a foreign government in place at a particular point in time for the purpose of vetting students who wish to study in Australia.

In addition, this information also contains assessments of specific concerns about particular international student cohorts, as well as assessments of the policies and practices adopted by certain other countries in relation to the management of the international student sector.

I am satisfied that based on the nature of the information in question, disclosure could reasonably be expected to impede good working relations between the Australian Government and the governments of the specific countries identified in the document. In particular I am satisfied that disclosure of this information could reasonably be expected to damage bilateral relations between the Australian Government and foreign governments and prejudice the future bilateral international cooperation on security initiatives and other matters of mutual concern.

In making my decision, I have had regard to, and placed weight on, consultation with the Department of Foreign Affairs and Trade.

Accordingly, I have decided to exempt parts of the document under section 33(a)(iii) of the FOI Act.

### **6.3 Section 37 of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety**

Section 37(2)(b) of the FOI Act provides that documents are exempt from disclosure if its disclosure would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would or could reasonably likely to, prejudice the effectiveness of those methods or procedures.

I consider that the information marked 's37(2)(b)' in the document would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting breaches or evasions of the law and that disclosure would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

The Department's role includes managing the security and integrity of Australia's borders. The Department leads the management of risks to Australia's border in close collaboration with other government agencies and the Department's role includes law enforcement functions.

I consider that the information marked 's37(2)(b)' in the document would disclose investigative methodology.

The disclosure of information within these documents would be reasonably likely to impact on ongoing investigative methodology used in its intelligence-led, risk-based approach to protection Australia's border. The release of this information would prejudice the effectiveness of that methodology, assisting endeavours to evade them and thereby reducing the ability of the Department to protect the borders of Australia.

I have decided that this information is exempt from disclosure under Section 37(2)(b) of the FOI Act.

### **6.4 Section 47E(d): Certain Operations of Agencies**

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

I am satisfied that disclosure of those parts of the document identified as exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice the effectiveness of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

The parts of the document marked 's47E(d)' would disclose methods currently adopted by the Department to detect fraudulent conduct within the visa system. I am satisfied that the disclosure of this information would provide insight to members of the public about how the Department conducts its operations to uncover instances of fraud. I am satisfied this information could reasonably assist members of the public who are engaging in this behaviour to plan their activities so that they are less likely to be detected by the Department.

I have decided that parts of the document are exempt under section 47E(d) of the FOI Act. I must give access to the documents unless, in the circumstances, access at this time would on balance be contrary to the public interest (subsection 11A(5) of the FOI Act). I have discussed the public interest considerations below.

## **6.5 Section 47G: Business Affairs**

Section 47G(1) of the FOI Act permits conditional exemption of documents containing information concerning business or professional affairs or the business, commercial or financial affairs of an organisation if disclosure would or could reasonably be expected to unreasonably affect a business in respect of its lawful business, commercial or financial affairs.

I consider that the parts of the document marked 's47G' are conditionally exempt on the basis that the disclosure of the information would have an unreasonable adverse effect on the business affairs of an organisation.

I am satisfied that this information concerns the business affairs of a particular third party, and details the activities of a particular business which is still in operation.

I am also satisfied that disclosure of this information could reasonably be expected to adversely affect that third party in respect of its lawful business affairs and that this adverse effect would be unreasonable in the circumstances.

In concluding that the adverse effect would be unreasonable, I have considered the accuracy, fairness and impartiality and the degree to which the facts are established.

I have decided that parts of the document are exempt in part under section 47G(1)(a) of the FOI Act. I must give access to the documents unless, in the circumstances, access at this time would on balance be contrary to the public interest (subsection 11A(5) of the FOI Act). I have discussed the public interest considerations below.

## **6.6 Section 11A: Public Interest Test**

In relation to the parts of the document I have decided have satisfied the statutory requirements under sections 47E(d) and 47G, I am required under section 11A of the FOI Act to consider whether access to the conditionally exempt information would be contrary to the public interest. In considering this, I must be satisfied that access to the conditionally exempt document would be, on balance, contrary to the public interest.

In my application of the public interest test, I have noted the objects of the FOI Act and the importance of the other factors outlined under section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- *Promote the objects of this Act (including all the matters set out in sections 3 and 3A)*
- *Inform debate on a matter of public importance*
- *Promote effective oversight of public expenditure*
- *Allow a person to access his or her own personal information.*

Having regard to the above factors, I have provided you with access to documents where the disclosure of the documents would promote the fundamental objects of the FOI Act. However, I also consider that the disclosure of documents would not, in my view, inform debate on a matter of public importance, nor would it promote the effective oversight of public expenditure. I note you are not seeking access to your own personal information

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents.

- I am of the view that the disclosure of information that has been exempted, pursuant to **section 47E(d)** of the FOI Act, would reasonably be expected to prejudice the proper and efficient discharge of the Department's detection of fraudulent conduct within the visa system. I have placed significant weight on the potential for disclosure to prejudice the Department's procedures to detect fraudulent conduct. I acknowledge that there is a public interest in methods 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. However, I consider that there is a strong public interest in maintaining the Department's ability to conduct risk assessment functions and that it would not be in the public interest for the Department's ability to protect Australia's borders be prejudiced in any way.
- I am of the view that the disclosure of information that has been exempted, pursuant to **section 47G(1)(a)** of the FOI Act, could reasonably be expected to adversely affect that third party in respect of its lawful business affairs. The information details the activities of a particular business still in operation and I have had regard to the accuracy, fairness and impartiality and the degree to which the facts are established. I place significant weight on the capacity for disclosure to interfere with business affairs of that third party organisation, and consider this to be a factor that weighs heavily against disclosure.

I have also had regard to the provisions under section 11B(4) outlining the factors that are irrelevant to my decision. These are as follows:

- 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 these factors in my decision.

Upon balancing all of the above relevant public interest criterion, I am satisfied and have decided that the disclosure of the conditionally exempt material is not in the public interest and therefore is exempt from disclosure under the FOI Act.

## **7. Deletion of exempt material**

I have decided to prepare an edited copy of the document. 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 (section 22(3) of the FOI Act).

## **8. Legislation**

A copy of the FOI Act is available for your reference from [www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal](http://www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal)

## **9. Review rights**

### Internal review

If you disagree with the decision, you have the right to apply for an internal review by the Department of my 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 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:

Freedom of Information  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

Or by email to: [foi.reviews@border.gov.au](mailto:foi.reviews@border.gov.au)

### 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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at [www.oaic.gov.au](http://www.oaic.gov.au).

## **10. Contacting the FOI Section**

If you wish to discuss this matter I can be contacted using the details provided below.

Yours sincerely



Authorised Decision Maker  
Department of Immigration and Border Protection