



DECISION RECORD

1 Scope of Request

You have requested access to a copy of the incoming brief provided to the Assistant Minister for Immigration and Border Protection in July 2016.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

3 Relevant material

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Reasons for Decision

My reasoning in relation to the application of each section to particular documents is set out below.

4.1 *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 has 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 document 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.

4.2 Section 33 of the FOI Act – 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 international relations of the Commonwealth.

I consider that there are real and substantial grounds for expecting that the disclosure of the parts of the document exempted under section 33(a)(iii) could reasonably be expected to cause damage to the international relations of the Commonwealth.

Information marked 's33(a)(iii)' in the document contain information provided to the Australian Government by foreign governments. I am satisfied that disclosing the material in question would reasonably be expected to cause damage to Australia's international relations. Specifically, I am satisfied that disclosure of the material could reasonably be expected to damage the Australian Government's working relations with the foreign governments in question.

As such, I have decided that the parts of the document marked 's33(a)(iii)' are exempt from disclosure under section 33(a)(iii) of the FOI Act.

4.3 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 parts of the document marked 's47C' contain information which would, if disclosed, disclose opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the deliberative processes of the Department.

This information includes policy considerations in relation to Migration Reform and Enhancing Visitor Visas together with recommendations arising from the OMARA Review Implementation.

The parts of pages 143 and 145-150 which I consider to be conditionally exempt under section 47C contain information in the form of advice and recommendations prepared by the Department for the Minister in relation to particular decisions that ought to be made by the Minister and the Government on matters within the portfolio, issues that may arise for consideration by the Minister and the Government in the short to medium term and the implementation of the Government's policy commitments. The advice in question clearly relates to a 'deliberative process' of both the Department and the Minister, involving the weighing up and evaluation of competing arguments in relation to particular policy issues within the portfolio.

I have considered whether the documents contain operational information (as defined in section 8A of the FOI Act) or purely factual material. To the extent that they do, no claim for exemption is made under section 47C. I am satisfied that the information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

As such I am satisfied that the information marked 's47C' on pages 143 and 145-150 is conditionally exemption 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 at paragraph 4.6 below.

4.4 Section 47E of the FOI Act – Operations of Agencies

Section 47E(d) of the FOI Act 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.

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

I consider that disclosure of which information would, or could, result in the prejudice of the effectiveness of the Department's law enforcement methodologies and operational procedures, and would, or could, result in the need for this Department, and potentially its partner agencies, to change those methods and/or procedures to avoid jeopardising their future effectiveness. As such, I consider that, if disclosed, the disclosure of this information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Accordingly, I have decided that parts of the documents referred to above are conditionally exempt under section 47E(d) 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 at paragraph 4.6 below

4.5 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under FOI would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and s 6 of the Privacy Act 1988).

I consider that disclosure of parts of page 22 of the document would disclose personal information relating to third parties. The information within the document would reasonably identify a person, either through their nationality, Boat ID, date of birth and/or given details of incidents involving those individuals.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in section 47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*

- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The personal information relating to these third parties is not well known and would only be known to a limited group of people with a business need to know. As the third parties' information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the third parties' information would be relevant to the broader scope of your request, as you are seeking access to the Incoming Assistant Minister's Brief, rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the document would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information marked 's47F' on page 22 is conditionally exempt under section 47F 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 at paragraph 4.6 below.

4.6 *The public interest – section 11A of the FOI Act*

As I have decided that parts of the document 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:

- 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:

- I am satisfied that access to the document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would only be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the document.

- I am satisfied that you do not require access to the document in order to access your own personal information.

Disclosure of all aspects of the document 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 document:

- Disclosure of the conditionally exempt advice and recommendations under **section 47C** of the FOI Act may:
 - prejudice the provision of frank and candid advice in future briefs, and lead to future advice and recommendations in an Incoming Government Brief being tailored to a public audience which could compromise the quality and value of the brief;
 - cause the Department to replace the written advice within any Incoming Government Brief with verbal briefings which could in turn compromise the quality of the Minister's future decision-making processes and the efficient implementation of policy by the Department;
 - limit the capacity of the Minister to select from the full range of policy options on particular matters
 - damage the development of good working relations between the Department and the Minister

I acknowledge that there is a clear public interest in the release of the advice and recommendations in question. However, having carefully considered the factors for and against disclosure, I am satisfied that the balance of the public interest lies in withholding access to the material in the circumstances.

The material in question contains advice and recommendations of Departmental officers on a wide range of policy matters within the portfolio. Ministers rely on a comprehensive and helpful written briefing on the full range of policy matters following an election to assist in their decision-making. I consider that in the event that the recommendations and advice were publicly released, there is a real risk that the advice in future briefs may be less direct and specific to the particular circumstances. I also consider that there is a real risk that the advice and recommendations previously committed to writing in the Incoming Assistant Minister's Brief would be replaced with oral briefings. In my view, the provision of a less detailed Incoming Brief and an increase in the reliance on verbal briefings could compromise the quality and efficiency of the Minister's current and future decision making processes.

Further, given the short timeframe between now and when the Brief was provided to the Assistant Minister, many of the issues which are discussed in the material in question remain under active consideration by the Minister. In that context, I consider that there is a real risk that the premature release of the advice and recommendations concerning particular policy matters could restrict the capacity of the Minister to exercise choice in relation to how to proceed in relation to those particular matters.

- I consider that the disclosure of the parts of the documents that are conditionally exempt under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice law enforcement functions and operational capabilities and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its law enforcement functions and operational capabilities is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- (a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- (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.*

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.



**Authorised Decision Maker
Department of Immigration and Border Protection**

(f)

December 2017