



Request Details

FOI Request: FA 16/09/02892; ADF2016/56247

[REDACTED]
Sent by email: [REDACTED]

Dear [REDACTED]

Freedom of Information request – decision on access

On 29 September 2016 you submitted a request to the Department of Immigration and Border Protection (the Department) for access to the following documents under the *Freedom of Information Act 1982* (FOI Act):

"All correspondence that mentions or relates to FA 16/05/01387."

On 20 October 2016, you agreed to exclude any duplicate email records, as well as the documents released as part of your previous FOI request, FA 16/05/01387.

Following consultation with the relevant internal business areas; Detention Services Division and Media Operations Section, 43 documents were identified as forming part of the agreed scope.

I note a decision on your FOI request is overdue and I appreciate your patience for the extended delay to allow the Department to finalise your FOI request.

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 Departmental records.

Information considered

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;
- consultations with relevant business areas; and
- formal consultation with third parties and their submissions.

Decision

I have decided to partially release the documents which are subject to the scope of your request, in accordance with the following sections of the FOI Act;

- 47E(d) – substantial adverse effect on the proper and efficient conduct of the operations of an agency
- 47F(1) – personal privacy
- 47G(1)(a) – affect business affairs and prejudice the future supply of information
- 22(1)(a)(ii) – Access to edited copies with exempt or irrelevant material deleted

Detailed reasons for my decision are provided below.

Reasons for decision

I have considered the 274 folios of the 43 documents that fall within the scope of your request and applied exemptions in part to the documents, as detailed in the Schedule of Documents which is provided at Attachment A. You should read the Schedule in conjunction with the exemptions below.

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

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 have considered whether the information is conditionally exempt on the basis that disclosure would or could result in a substantial adverse effect on the proper and efficient conduct on the operations of the contractual arrangements for services at offshore Regional Processing Centres (RPCs), as well as the assurance activities undertaken by the Department, under section 47E(d) of the FOI Act.

The disclosure of the exempt material would impact on the ability and efficiency for the Department to undertake thorough assurance activities and reviews if the sources of information were confirmed, which were not publicly released, and if their tactics and methods were revealed. This could prejudice future assurance reviews if employees and subcontractors were to learn that the information they volunteered during assurance reviews were to be released. This could lead to employees, contractors and/or subcontractors declining to offer such information and to participate in future assurance activities and reviews. I consider this would severely harm the ability for the Department to obtain voluntary, frank and candid information and could have a significant impact on the efficiency of future assurance activities, which is key to the operations of the Department.

I consider this significant and not insubstantial and would severely impact on the ability for the Department to undertake future assurance activities in a proper and efficient manner, which is critical to the Department being able to conduct its operations in a proper and efficient way.

The Department undertakes various Garrison, Welfare and Health Services for asylum seekers accommodated at offshore RPCs, for which the current contractual arrangements provide critical support to the Department to meet its obligations. The RPCs are central to the Australian Government's commitment to its border protection strategy and therefore the RPCs ability to function as intended, is a key operation of the Department.

The Department relies on contracted service providers to carry out their agreed services and in addition, to regularly supply information and statistical data to the Department for a range of reporting functions including to Parliamentary Inquiries, Senate Estimates, and audit and scrutiny purposes.

If the exempt material were disclosed it could damage the good relations the Department has with the critical service providers, and increase the risks that a breach of commercial in confidence privacy provisions which could have an adverse flow-on effect to any future negotiations that the Department may engage in, in connection with the contractual arrangements of the Department in connection to the RPCs. Any disruption to the relationship with the contract service provider would be damaging to the Department and to the Australian Government's commitment to border protection.

I consider this significant and not insubstantial and would severely impact on the contractual arrangements for the services, which is a critical operation of the Department.

Therefore, disclosure could reasonably be expected to adversely impact the Department's operations relating to the contractual arrangements for services at RPCs and affect the assurance activities undertaken by the Department. I find that these documents are conditionally exempt in part under section 47E(d) of the FOI Act. Nonetheless 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). My assessment of the public interest is provided on page 5.

47F(1) – documents affecting personal privacy

Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Privacy Act). Personal information is defined in section 6 of the Privacy Act as:

..information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not
- b) whether the information or opinion is recorded in a material form or not.

The elements of 'personal information' are:

- it relates only to a natural person (not, for example, a company)
- it says something about the individual
- it may be in the form of an opinion, it may be true or untrue, and it may form part of a database
- the individual's identity is known or is reasonably ascertainable using the information in the document.

I find some of documents relating to the scope of your request contain information identifying third parties including their names, phone numbers, email addresses and their signature's. I am satisfied that parts of documents over which an exemption under section 47F is claimed, contain personal information.

Disclosure unreasonable

If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:

- 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 accessible sources
- any other matter I consider relevant

The Department undertook consultation with the third parties to identify if they reasonably contended to the release of their personal information, and the third parties wished to remove or redact such information.

I am satisfied that the third party's personal information is not well known nor publicly available, and they are not known to be associated with the subject of the documents. The nature of the information is of a sensitive nature, due to the media interest in the court proceedings and the associated witnesses. Despite the extensive media coverage, the information about the individuals has not been released publicly. Further, I note that to release the third party's personal information would not enhance accountability or transparency on this issue.

On that basis, I have concluded that disclosure of the information would be unreasonable.

I find that the documents are conditionally exempt in part under section 47F of the FOI Act. Nonetheless I must give access to the documents unless, in the circumstances, access at this time would on balance be contrary to the public interest. My assessment of the public interest is provided on page 5.

47G(1)(a) – affect business affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing information concerning business or professional affairs of 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

Business affairs information

I find that the documents exempted under section 47G(1)(a) contains information concerning the business affairs of multiple third parties by way of identifying the business address and the business who conducted the investigations and provided the associated report.

Adverse effect

I find that disclosure of this information would, or could reasonably be expected to, adversely effect that third party in respect of his, her or its lawful business affairs. Following consultation with the third party, I find that disclosure of the documents would reveal the particular investigations, methodology and practices that give the business in question a competitive edge over its rivals in the marketplace. The nature of the matter investigated was particularly sensitive and attracted considerable media interest. To reveal the association between the business and the matter investigated may cause undue scrutiny and cause harm to the future of the business.

Additionally, I am satisfied that another third party was consulted to identify if they reasonably contended to the release of their business address. The third party objected to the release of their address location as it would cause undue stress by revealing their association with the matters, which has not been released in the public domain. I am satisfied that the circumstances described by the third party would cause an adverse effect.

The adverse effect is unreasonable

I find that this adverse effect would be unreasonable in all the circumstances. In finding that the adverse effect would be unreasonable, I have considered the third parties contentions that to disclose the exempt material would reveal the third party's association with the investigations, which has not been publicly released and the effect on their business would be unreasonable.

Nonetheless 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). My assessment of the public interest is provided below.

Public interest

Conditionally exempt matter must be released unless, in the circumstances, access to the documents at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act). I have considered the factors favouring access and the factors that are irrelevant in subsections 11B(3) and (4).

Factors in favour of disclosure

In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- disclosure would promote the objects of the FOI Act
- disclosure would inform debate on a matter of public importance
- contribute to the administration of justice for a person in a RPC

Factors against disclosure

I have considered the following factors against disclosure:

- disclosure would cause damage to the Department's services contractor/s
- disclosure would prejudice the ability for the Department to undertake assurance activities
- disclosure would unreasonably interfere with the private business affairs of third parties
- disclosure would unreasonably interfere with the privacy of third parties
- the need to preserve reasonably held expectations of confidentiality

- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future

Finding on the public interest

I acknowledge that there is a public interest in documents of this Department being made available to the public for the purpose of encouraging public debate and to promote oversight of the Department's activities. However, having regard to the nature of the documents in question, I do not consider that disclosure of the documents would facilitate any of these objects.

The Department's primary role is to manage the security and integrity of the borders of Australia, and any prejudice to that would be contrary to the public interest and weighs heavily against disclosure.

I also note that whilst disclosure of the exempt material in the documents may assist the administration of justice for an individual such as in a RPC, it is also equally important that the Department upholds its obligations to protect information of a confidential nature. To do so, could reasonably be expected to prejudice an agency's ability to obtain similar information in the future and to effectively conduct reviews on sensitive matters in the future. I give this equal weighting.

In this case, I have formed the view that the disclosure of the personal and business affairs information will make a negligible contribution to those factors in favour of disclosure. It is firmly in the public's interest to maintain an individual's right to privacy and this public interest outweighs any public interest in disclosure of the information.

Finally, I also gave consideration to the public's interest in the continuation of services provided on the RPCs. To disclose the exempt material would undermine the good relations with the contracted service provider and potentially impact on the Department's ability to obtain information in the future, for its reporting obligations to Parliament. This in turn would have an adverse flow-on effect on the ability for the Department to meet the objects of the FOI Act; to increase democracy, transparency of government decision making and public participation and scrutiny of Government activities. In forming my view on the question of public interest, I have attributed the greatest weight to this factor.

Accordingly, I have concluded that disclosure of the material would, on balance, be contrary to the public interest and that parts of the document are exempt under section 47E(d), 47F and 47G(1)(a) of the FOI Act.

22(1)(a)(ii) – Access to edited copies with exempt or irrelevant material deleted

Section 22(1)(a)(ii) allows an agency to delete irrelevant material from a document which is only partially relevant to an applicant's FOI request.

On 14 December 2016, you were notified by email of the Department's policy to exclude the personal details of officers not in the Senior Executive Services (SES), as well as the contact details of SES staff.

I find that all 43 documents relevant to your request contain personal details of non-SES Departmental staff, which is irrelevant to your FOI request. Therefore, I have withheld their personal details accordingly.

Department's Disclosure Log

The FOI Act requires that information in *accessed documents* must be published to members of the public on a website as outlined in section 11C(3). Further, the FOI Act requires that the information be published *within 10 working days after the day the person is given access to the document* (section 11C(6)).

The process is that, in any given week, documents released to applicants in the period Thursday through to the following Wednesday are placed on the Department's Disclosure Log that Friday.

Review rights

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 your 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.

How to make a complaint about the handling of your FOI request

I note you currently have a complaint before the Australian Information Commissioner. If you are satisfied with how the Department has finalised your request under the FOI Act, please notify the Australian Information Commissioner and quote **MR16/00565** and **FA 16/09/02892**.

A copy of this decision letter will be provided to the Office of the Australian Information Commissioner for their records.

Legislation

A copy of the FOI Act is available from:

<https://www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal>

Please contact our office if you are unable to access the legislation from this website.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted by email to FOI@border.gov.au.

Yours sincerely



Authorised decision maker
Department of Immigration and Border Protection

10 March 2017



Attachment A

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 16/09/02892; ADF2016/56247

| No. | Date of document | No. of pages | Description | Decision on release |
|-----|------------------|--------------|---|----------------------------|
| 1. | 18 May 2016 | 4 | Email: New FOI request – seeking documents – [REDACTED] – FA 16/05/01387 ADF2016/21290 | s.22(1)(a)(ii) |
| 2. | 18 May 2016 | 2 | Email: FOI Alert – New request received by the Department | s.22(1)(a)(ii) |
| 3. | 30 May 2016 | 5 | Email: Re: New FOI request – Seeking documents – [REDACTED] – FA16/05/01387; ADF2016/21290 Refer to Document 1 for the attachments | s.22(1)(a)(ii) |
| 4. | 31 May 2016 | 12 | Email: RE: For your early action, pls: New FOI Request – Seeking documents- [REDACTED] – FA16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) |
| 5. | 10 June 2016 | 13 | Email: RE: For your early action, pls: New FOI Request – Seeking documents – [REDACTED] – FA16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) |
| 6. | 10 June 2016 | 2 | Email: Request for s15AB extension – DIBP – [REDACTED] – FA16/05/03187 | s.22(1)(a)(ii) |
| 7. | 15 June 2016 | 4 | Email: RE: RQ16/02285 – Request for es15AB extension – DIBP [REDACTED] FA16/05/03187 | s.22(1)(a)(ii) |
| 8. | 22 June 2016 | 14 | Email: RE: For your early action, pls: New FOI Request – Seeking documents – [REDACTED] – FA16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) |
| 9. | 18 July 2016 | 15 | Email: RE: Follow-up on FOI request – Broadspectrum – re. [REDACTED] – FA16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) |
| 10. | 21 July 2016 | 17 | Email: RE: Response follow up on FOI request Broadspectrum – re. [REDACTED] – FA16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) s.47E(d) |
| 11. | 21 July 2016 | 1 | Email: File note FA16/05/01387 - telephone call from [REDACTED] | s.22(1)(a)(ii) |

| No. | Date of document | No. of pages | Description | Decision on release |
|-----|------------------|--------------|--|--|
| 12. | 22 July 2016 | 2 | Email: DRAFT Request for s15AB extension – DIBP – Applicant [REDACTED] FA16/05/01387 | s.22(1)(a)(ii) |
| 13. | 22 July 2016 | 3 | Email: Request for further s15AB extension – DIBP – Applicant [REDACTED] FA16/05/01387 | s.22(1)(a)(ii) |
| 14. | 23 July 2016 | 11 | Email: RE: RESPONSE: Follow-up on FOI request – Broadspectrum -re. [REDACTED] [REDACTED] FA 16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) s.47E(d) s.47F(1) |
| 15. | 24 July 2016 | 2 | Email: RE: Re your email | s.22(1)(a)(ii) s.47E(d) s.47F(1) |
| 16. | 29 July 2016 | 19 | Email: RE: Follow up on FOI request – Broadspectrum – re. [REDACTED] – FA16/05/01387; ADF2016/21290 | s.22(1)(a)(ii) s.47E(d) |
| 17. | 2 August 2016 | 9 | Email: FWD: FOR ACTION: - New FOI request – Seeking documents – [REDACTED] [REDACTED] FA16/05/01387 ADF2016/21290 (attachment) | s.22(1)(a)(ii) s.47F(1) s.47G(1)(a) |
| 18. | 2 August 2016 | 8 | Email: FA16/05/01387 [REDACTED] | s.22(1)(a)(ii) s. 47E(d) s.47F(1) s.47G(1)(a) |
| 19. | 2 August 2016 | 2 | Email: FW: 2015/10-09 Media Leaks investigation (attachment) | s.22(1)(a)(ii) |
| 20. | 2 August 2016 | 2 | Email: RE: 2015/10-09 Media Leaks Investigation | s.22(1)(a)(ii) |
| 21. | 2 August 2016 | 2 | Email: RE: OAIC – [REDACTED] | s.22(1)(a)(ii) |
| 22. | 2 August 2016 | 3 | Email: RE: 2015/10-09 Media Leaks investigation | s.22(1)(a)(ii) |
| 23. | 3 August 2016 | 1 | Email: FOI request FA16/05/01387 | s.22(1)(a)(ii) |
| 24. | 4 August 2016 | 3 | Email: RQ16/02607 Extension of time request under s15AB | s.22(1)(a)(ii) |
| 25. | 11 August 2016 | 2 | Email: RE:TRIM: FOI request FA16/05/01387 | s.22(1)(a)(ii) |
| 26. | 16 August 2016 | 2 | Email: FW:TRIM:RE:TRIM: FOI request FA16/05/01387 | s.22(1)(a)(ii) |
| 27. | 16 August 2016 | 1 | Email: File note: - [REDACTED] | s.22(1)(a)(ii) |
| 28. | 16 August 2016 | 5 | Email: FOI Request – Consultation with | s.22(1)(a)(ii) |

| No. | Date of document | No. of pages | Description | Decision on release |
|-----|-------------------|--------------|---|--|
| | | | Broadspectrum and Wilson Security – FA16/05/01387 | |
| 29. | 16 August 2016 | 8 | Email: RE: FOR URGENT CLEARANCE: Talking points – [REDACTED] FOI – Wilson staff misconduct claims (attachment) | s.22(1)(a)(ii) |
| 30. | 16 August 2016 | 3 | Email: UPDATE – FOI Alert – New request received by the Department | s.22(1)(a)(ii) |
| 31. | 16 August 2016 | 3 | Email: FOI – Update on [REDACTED] request | s.22(1)(a)(ii) |
| 32. | 22 August 2016 | 3 | Email: RE: TRIM: RE: TRIM: FOI request FA16/05/01387 | s.22(1)(a)(ii) |
| 33. | 22 August 2016 | 4 | Email: TRIM: RE: TRIM: FOI request FA16/05/01387 | s.22(1)(a)(ii) |
| 34. | 23 August 2016 | 7 | Email: FW:TRIM:RE:TRIM: FOI request FA16/05/01387 | s.22(1)(a)(ii) |
| 35. | 23 August 2016 | 3 | Email: By Tue 23 August, pls: FOI request – Consultation with Broadspectrum and Wilson Security – FA16/05/01387-(formal consultation) | s.22(1)(a)(ii) s.47F(1) |
| 36. | 24 August 2016 | 16 | Email: RE: By Noon on Tue 23 August. Pls: FOI request – Consultation with Broadspectrum and Wilson Security – FA16/05/01387 – (formal consultation) | s.22(1)(a)(ii) s.47E(d) s.47F(1) |
| 37. | 25 August 2016 | 2 | Email: FW: By noon on Tue 23 August, pls: FOI Request – Consultation with Broadspectrum and Wilson Security – FA16/05/01387 – (formal consultation) | s.22(1)(a)(ii) s.47F(1) |
| 38. | 1 September 2016 | 19 | Email: FW: By noon on Tue 23 August, pls: FOI Request – Consultation with Broadspectrum and Wilson Security – FA16/05/01387-formal consultation | s.22(1)(a)(ii) s.47E(d) s.47F(1) |
| 39. | 6 September 2016 | 5 | Email: For Action: Proposed FOI decision for your consideration – FA16/05/01387 (attachment) | s.22(1)(a)(ii) |
| 40. | 13 September 2016 | 9 | Email: For Action: Draft FOI decision for your consideration – FA16/05/01387(attachment) | s.22(1)(a)(ii) |
| 41. | 21 September 2016 | 12 | Email: RE: For Action: Draft FOI decision for your consideration – FA16/05/01387 | s.22(1)(a)(ii) |
| 42. | 22 September 2016 | 12 | Email: RE: For Action: Draft FOI decision for your consideration – FA16/05/01387 | s.22(1)(a)(ii) |
| 43. | 22 September 2016 | 2 | Email: FOI Alert – Pending FOI decision | s.22(1)(a)(ii) |

| No. | Date of document | No. of pages | Description | Decision on release |
|-----|------------------|--------------|--|---------------------|
| | | | - [REDACTED] - FA16/05/01387 (attachment) | |