



In reply please quote:

FOI Request: FA 16/11/01068

File Number: ADF2016/69758

23 March 2017



Dear 

I refer to your email dated 11 November 2016 in which you request access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

1 Scope of Request

You have requested access to the following documents held by the Department:

1. *All documents relating to the Arrangements for Child Visa Applications 2015 (Legislative Instrument - IMMI 15/136) that were considered by the Minister for Immigration and Border Protection ("Minister") or were before the Minister in making that instrument;*
2. *All documents relating to the Arrangements for Child Visa Applications 2016 (Legislative Instrument - IMMI 16/015) that were considered by the Minister or were before the Minister in making that instrument, and*
3. *All documents containing statements made by or on behalf of the Minister about the reasons for, or purposes of, the said instruments (IMMI 15/136 and IMMI 16/015).'*

This letter is to notify you of the Department's decision on access to the documents subject to your request.

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;
- consultations with relevant stakeholders; and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Documents relevant to your request

The Department has identified two documents that fall within the scope of your request. These documents were in the possession of Department on 11 November 2016 when your FOI request was received.

These documents consist of:

- Ministerial Submission MS15-029617 relating to the Legislative Instrument IMMI15/136 – Arrangement for Child Visa Applications 2015;
- Ministerial Submission MS16-002821 relating to the Legislative Instrument IMMI16/051 – Arrangements for Child Visa Applications 2016/051.

The Department does not hold any documents containing statements made by or on behalf of the Minister about the reasons for, or purposes of, the said Legislative Instruments.

5 Decision on access

The decision in relation to the documents in the possession of the Department which come within the scope of your request is to release two documents in part with deletions. The reasons for this decision are set out below.

In relation to part 3 of your request, I am satisfied that the Department has conducted reasonable searches, and that no documents exist that fall within that part of your request. As such, the Department holds no documents to produce in that regard. This part of my decision is made under section 24A of the FOI Act.

6 Reasons for Decision

I am satisfied that I have been provided with all the documents that are relevant to your request. My reasoning in relation to the application of each section to particular documents is set out below.

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 17 November 2016, 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 the parts of the 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 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.

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. The expectation of damage to international relations must be reasonable in all the circumstances.

I am satisfied that the disclosure of the information marked 's33(a)(iii)' would, or could reasonably be expected to cause damage to the Commonwealth's international relations.

As such, I have decided that part of document 1 is exempt from disclosure under section 33(a)(iii) of the FOI Act.

6.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C(1) 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.'¹

I consider that parts of the documents contain advice, opinions and recommendations involved in the deliberative processes of the Minister and the Government in considering amendments to Legislative Instruments. This advice, opinion and recommendations were provided as part of the functions of both the Department and the Minister.

Disclosure of this deliberative information could reasonably be expected to inhibit full and frank advice from Departments and, as a result, full consideration by Ministers on any potential future consideration of amendments to Legislative Instruments. Disclosure of some deliberative information, on which a decision has not yet been taken, could also reasonably be expected to prejudice consultations with relevant stakeholders.

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

I have decided that information marked 's47C' in the documents is conditionally exemption in 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.

¹ See *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

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 subject matter of the documents does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would 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 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:

- I consider that disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of Departments to provide full and frank advice to Ministers in future matters. I consider that there is a strong public interest in there being no hindering of that process. I am of the view that a precedent of public disclosure advice given as a part of those deliberative processes would result in such concerns existing, which may then hinder future deliberations and decision making processes for the Department and the Government as a whole. I therefore consider that the public interest in protecting the process of providing free and frank advice and recommendations to Ministers has, on balance, more weight, than the public interest that might exist in disclosing those actual deliberations.

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.

7 Legislation

A copy of the FOI Act is available for your reference at <https://www.legislation.gov.au/Series/C2004A02562>.

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:

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

OR

By email to: 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 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 Contact

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



**Humanitarian, Family and Citizenship Policy Branch
Department of Immigration and Border Protection**