



29 November 2017

BY EMAIL: [REDACTED]

In reply please quote:

FOI Request: FA 17/07/00010
File Number: ADF2017/70280

Dear [REDACTED]

Freedom of Information – Decision on Access

I refer to your email dated 2 July 2017 in which you requested 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:

any documents related to the aim or purpose of DIBP funding provided to IOM Indonesia to conduct assisted voluntary returns (AVRs) from Indonesia.

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, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Documents in scope of request

The Department has identified four documents that fall within the scope of your request. These documents were in the possession of Department on 2 July 2017 when your FOI request was received.

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 as follows:

- Release Documents 1 and 2 in part with deletions
- Exempt Documents 3 and 4 in full from release.

6 Reasons for Decision

I am satisfied that I have been provided with all the documents that are relevant to your request.

I have decided to exempt in full from release Documents 3 and 4, under section 33(a)(iii) of the FOI Act – *International relations*. However, as some of the information in Document 4 is conditionally exempt from release under sections 47C(1), 47E(d) and 47F of the FOI Act, I am required to consider whether it is in the *public interest* to release this information to you.

The schedule of the four documents that fall within the scope of your request at **Attachment A**, sets out the decision on access and where appropriate, refers to various sections of the FOI Act. 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.

I have decided that all pages, excluding page 27 of Document 2 are irrelevant to the request, as those pages deal with information about a review of the Regional Cooperation Arrangement Programme. As such they are considered to not fall within the scope of your request.

I have therefore decided that parts of Documents 1 to 4 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 documents have been considered for release to you as they are relevant to your request.

7 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 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.

I consider that the release of the information marked s33(a)(iii) in the documents would, or could reasonably be expected to cause damage to the Australian Government's international relations.

I am of the view that the disclosure of parts of Documents 1 to 4 could reasonably be expected to inhibit future negotiations between the Australian Government and a foreign government. The documents contain international bilateral operational information regarding management of cohorts of Potential Irregular Immigrants (PIIs).

In addition, the documents contain opinions and recommendations regarding international status resolution arrangements, in relation to Assisted Voluntary Return (AVR) through the Regional Cooperation Arrangement (RCA).

As such I have decided that Document 3 is exempt in full from disclosure and that the information redacted under s33(a)(iii) in the other documents are exempt from disclosure under section 33(a)(iii) of the FOI Act.

7.1 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.'¹

I consider that the exempt information in Document 4 contains the opinions and deliberations and subsequent recommendations, regarding the reform and improvement of current international AVR arrangements through the RCA.

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

I have decided that Document 4 is exempt in full 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 at paragraph 8.2 – *The public interest test*.

8 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.

The material exempted under s.47E(d) in the Documents 1 and 4 consists of methods and procedures relating to coordination of Australian and international authorities in managing PIIs. In addition, there is operational information in Document 4 that if released to the public, could reasonably be expected to have a negative effect on these international cooperation arrangements,

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

I consider that the disclosure of parts of Documents 1 and 4 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 the documents 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 at paragraph 8.2 – *The public interest test*.

8.1 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 the FOI Act 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 s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

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 s.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 information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this 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 information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to "*any documents related to the aim or purpose of DIBP funding provided to IOM Indonesia to conduct assisted voluntary returns (AVRs) from Indonesia*" rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals. I consider that individuals may be identifiable in Document 4.

I have decided that the information referred to above 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 at paragraph 8.2 – *The public interest test*.

8.2 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 limited scope and, in my view, would be of interest to a narrow section of the public.
- 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 regarding Assisted Voluntary Return discussions – could reasonably be expected to prejudice the ability of the Department to manage future negotiations in relation to the management of *Potential irregular immigrants* attempting to arrive in Australia. This is a factor which I consider strongly weighs against disclosure of Document 4 from release.
- I consider that the ability of the Department to maintain effective operational arrangements with international stakeholders to be in the public interest. This is a factor which I consider strongly weighs 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.

9 Legislation

A copy of the FOI Act is available 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.

10 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>.

11 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.

12 Contact

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



Director, South East Asia
Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

ATTACHMENT A

Schedule of Documents

FOI request: FA 17/07/00010

File Number: ADF2017/70280

	Date of document	No. of pages	Description	Decision on release	
1.	N/A	2	Border Protection Taskforce Briefing – Assisted Voluntary Returns of potential irregular immigrants	Exempt in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F s.47E(d)
2.	January 2016	97	Review of Regional Cooperation Arrangements in Indonesia 2015	Exempt in part	s.22(1)(a)(ii) s.33(a)(iii)
3.	April 2016	1	Factsheet – Australia supports Indonesia to manage irregular migrants	Exempt in full	s.22(1)(a)(ii) s.33(a)(iii)
4.	10 February 2017	16	Review of Assisted Voluntary Returns and Reintegration Assistance (AVRR) for Intercepted Migrants residing in Indonesia	Exempt in full	s.22(1)(a)(ii) s.33(a)(iii) s.47C(1) s.47F s.47E(d)