



15 December 2017

[REDACTED]
BY EMAIL: [REDACTED]

In reply please quote:

FOI Request: FA 17/09/00524

File Number: ADF2017/98134

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 12 September 2017, the Department of Immigration and Border Protection (the Department) received a request for access to documents under the *Freedom of Information Act* 1982 (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

"All documents relating to:

- 1. the software used to perform the Security Risk Assessment Tool (SRAT), the algorithm to assess the security risk of asylum seekers and others detailed in immigration detention in Australia [Item 1]*
- 2. the group's responsible for managing the SRAT, maintaining the software that runs it, and ongoing developments of the software [Item 2]*
- 3. the source code for the SRAT; and [Item 3]*
- 4. the risk assessment for the SRAT' [Item 4]*

2 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 records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request

- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- consultation responses from third parties consulted in accordance with the FOI Act
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access and
- the Department's guidance material on the FOI Act.

4 Documents in scope of request

The Department has identified two documents falling within the scope of your request. These documents were in the possession of the Department on 12 September 2017 when your request was received.

Legislation

In order to interpret **Items 1** to **Item 3** of your FOI request, I have considered the following relevant parts of the FOI Act (emphasis added in bold):

3 Objects—general

*The objects of this Act are to give the Australian community **access to information** held by the Government of the Commonwealth, **by:***

- *requiring agencies to publish the information; and*
- *providing for a right of access to documents.*

4 Interpretation

In this Act, unless the contrary intention appears:

*A **document** includes:*

- *any of, or any part of any of, the following things:*
 - *any paper or other material on which there is writing;*
 - *a map, plan, drawing or photograph;*
 - *any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;*
 - *any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;*
 - *any article on which information has been stored or recorded, either mechanically or electronically;*
 - *any other record of information; or*
 - *any copy, reproduction or duplicate of such a thing; or*
 - *any part of such a copy, reproduction or duplicate;*

I have also considered the Australian Information Commissioners Guidelines and note paragraph 2.33 which states:

Documents in existence

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

With the legislation and the above interpretation of a 'document' in mind, the FOI Act provides for access to 'discrete' documents (electronic or hard copy).

Based on advice of the business area, I am satisfied that the Department does not hold any discrete documents (electronic or hard copy) that provides answers **Item 1 to Item 3** of your FOI request. However, the Department has identified two documents, in relation to the Security Risk Assessment Tool (SRAT) which includes some information you are seeking.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in part with deletions, and
- Exempt one document in full from disclosure.

6 Reasons for Decision

Where the schedule of documents indicate an exemption claim has been applied to a document or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that information are 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 parts of document one would disclose information that is not relevant to the scope of your request as the information relates to figures or statistics. Part of document two contains a title of the version of the document. Therefore, I have withheld that material pursuant to section 22(1)(a)(ii) of the FOI Act.

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

6.2 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 both documents contain information about the Department's lawful detection and investigative methods and procedures relating specifically to the safe and secure management of people while accommodated at Immigration Detention facilities. The release of the documents would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting risks while operating the management of people at Immigration Detention facilities.

The disclosure of this material in any form, would prejudice or could reasonably be expected to, have a substantial adverse effect on the management of operational mechanisms conducted in Immigration Detention facilities as the release of such documents would provide people with an unfair advantage allowing them to modify their behaviour to prevent and to better avoid detection in the future and allowing them with details on how to circumvent these methodologies. This is likely to lead to the program being vulnerable to risks, assisting endeavours to evade detection and thereby reducing the ability of the Department to conduct adequate processes for the safety operational management of people at Immigration Detention facilities.

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

7 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.

I consider that the disclosure of parts of these documents would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct 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 those law enforcement methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of those law enforcement methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Mosaic theory

This theory holds that individual pieces of information, when combined with other pieces, can generate a harmful composite, - a mosaic, that can damage the operations of an agency.

It is important to note that when assessing the potential harm in releasing a document, a decision maker will consider the content of the document in question. However when evaluating the potential harmful effects of disclosing documents that affect the Commonwealth, decision makers may also take into account the 'mosaic theory'.

The documents exempted hold national level framework to the detainee risk assessment process which is sensitive. Access to this information is strictly limited to certain people authorized to access it within the Department. The Department has an obligation to keep such information confidential, not only to protect its own information, but the information and records that the Department retains on behalf of individuals, businesses, other government agencies and international governments.

As such, I consider that these documents exempted under this exemption would, or could reasonably be expected to disclose lawful methods or procedures used by the Department in assessing applicants who may pose a risk to the Australian community.

The disclosure of this type of information would be likely to impact ongoing investigative methodology and operations of the Department in undertaking the assessment of those in the Detention facilities.

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 in that regard below.

7.1 The public interest – section 11A of the FOI Act

As I have decided that parts of document one 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. 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, 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 is not compromised or prejudiced in any way. I give this significant weight in my assessment.

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.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

9 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:

By email to: foi.reviews@border.gov.au

OR

By mail to:

Freedom of Information Section

Department of Immigration and Border Protection

PO Box 25

BELCONNEN ACT 2617

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>.

10 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.

11 Contacting the FOI Section

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



Department of Immigration and Border Protection

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982***

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No	Date of document	No. of pages	Description	Decision on release	
				Release in part	22(1)(a)(ii) s.37 s.47E(d)
1.	3 November 2015	14	Security Risk Assessment Tool Brief		
2.	September 2016	4	Security Risk Assessment Template	Refuse in full	s.37 s.47E(d)