



25 September 2018

In reply please quote:

FOI Request: FA 18/01/00983
File Number: ADF2018/12650

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 29 January 2018, the Department of Home Affairs (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:

- 1) *Notes and records of interviews with the survivors on HMAS Albany and HMAS Warramunga Ship following SIEV 794 capsized*
- 2) *Records and interviews with the Survivors in Christmas Island by the Australian Customs and Border Protection and*
- 3) *Records/log notes of HMAS Albany and HMAS Warramunga during SOLAS and the decision to close the Search and Rescue (SAR 2013/4816) for SIEV 794.*

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)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- advice from other Commonwealth Departments

4 Documents in scope of request

The Department has identified 30 documents as falling within the scope of your request. These documents were in the possession of the Department on 29 January 2018 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

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 30 documents in part with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 *Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations*

Section 33(a)(i) 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 security of the Commonwealth.

For the reasons set out below, I consider that there are real and substantial grounds for expecting that the disclosure of the documents exempted under section 33(a)(i) would cause damage to the security of the Commonwealth.

Security

'Security' is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time.¹ 'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as follows:

- (5) *Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:*
 - (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and ...*

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant.² That Act defines 'security' as:

- (a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*
 - (i) *Espionage*
 - (ii) *Sabotage*
 - (iii) *Politically motivated violence*
 - (iv) *Promotion of communal violence*
 - (v) *Attacks on Australia's defence system; or*
 - (vi) *Acts of foreign interference;**Whether directed from, or committed within, Australia or not; and*
 - (aa) *the protection of Australia's territorial and border integrity from serious threats; and*
 - (b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

Paragraph (aa) is particularly on point. It was inserted by the *Anti-People Smuggling and Other Measures Act 2010* (Cth) (Schedule 2). The Explanatory Memorandum for the *Anti-People Smuggling and Other Measures Bill 2010* (Cth), states that 'serious threats to Australia's territorial and border integrity' include 'those posed by people smuggling activities' (at 2-3).

Vessel tasks

The vessels referred to in the documents are engaged in a range of operations on behalf of the Australian Government, patrolling waters off the Australian coast. In undertaking that work the vessels are under the direction of Maritime Border Command (MBC). MBC is Australia's lead civil maritime security authority. It brings together officers from the

¹ *Church of Scientology v Woodward* (1982) 154 CLR 25 at [19].

² See *Staats and National Archives of Australia* [2010] AATA 531 at [99].

Australian Border Force (ABF) and the Department of Defence (Defence) as a multi-agency taskforce to identify and respond to illegal activity in Australia's Maritime Domain (AMD). The vessels include Royal Australian Navy vessels and, ABF vessels to the Department.

The vessels are responsible for a number of functions, including in relation to:

- illegal exploitation of natural resources;
- illegal activity in protected areas;
- illegal maritime arrivals;
- prohibited imports and exports;
- maritime terrorism;
- piracy, robbery or violence at sea;
- compromise to biosecurity; and
- marine pollution.

In respect of these areas of responsibility, the vessels and their crew have a range of functions and powers including:

- patrolling the AMD;
- surveillance and intelligence gathering;
- detaining and inspecting vessels suspected of illegal activity within the AMD;
- taking control of vessels or directing them to take particular action, including leaving the AMD or sailing under the Australian vessel's watch to a designated destination; and
- where necessary, destroying craft which pose a risk to Australia (such as craft which are infected with biohazardous organisms, or craft engaged in maritime terrorism).

For a document (or part of a document) to be exempt under s 33(a)(i), I must be satisfied that, on the balance of probabilities, disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

I consider that the disclosure of the information contained within the document that I regard as exempt under s 33(a)(i) could cause damage to the security of the Commonwealth by compromising operational functions, increasing the risk to Australian vessels and personnel and encouraging illegal activity. I consider the particular damage to the security of the Commonwealth to be as follows:

- (a) Information within the documents would provide insight into the manner in which vessels involved in national security operations undertake those functions, including tactics, training and procedures.
- (b) Increasing the risk to Australian vessels and personnel undertaking border protection work. Patrolling and protecting Australia's AMD is an inherently dangerous task. By releasing information that would make the activities of Australian vessels more predictable, the risk that a person would be willing to, and successful in, causing harm or damage to Australian vessels or people is increased.

As such I have decided that the information marked 's33(a)(i)' in the document(s) is exempt from disclosure under section 33(a)(i) of the FOI Act.

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 parts of document numbered 4, 7, 8, 9, 11, 12, 14, 20 and 25 would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting breaches or evasions of the law and that disclosure would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

It is noted that the Department's role includes managing the security and integrity of Australia's borders. The Department leads the management of risks to Australia's border in close collaboration with other government agencies, including State and Federal law enforcement agencies. As such, the Department's role includes law enforcement functions.

The disclosure of information within these documents would be reasonably likely to impact on ongoing investigative methodology and relationships both domestically and internationally that support Australian government investigative capabilities. The release of this information would prejudice the effectiveness of those methods or procedures, assisting endeavours to evade them and thereby reducing the ability of the Department and other law enforcement agencies to protect the borders of Australia.

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

7 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.

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:

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

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
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>.

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 Home Affairs as the relevant agency.

10 Contacting the FOI Section

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



**Authorised Decision Maker
Department of Home Affairs**

ATTACHMENT A

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

FOI request: FA 18/01/00983

File Number: ADF2018/12650

	Date of document	No. of pages	Description	Decision on release	
1.	16/07/2013 at 4.32	1	HMAS Albany log (1)	Partial	s. 33(a)(i)
2.	16/07/2013 at 4.32	1	HMAS Albany log (2)	Partial	s. 33(a)(i)
3.	16/07/2013 at 5.02	1	HMAS Warramunga log	Partial	s. 33(a)(i)
4.	16/07/2013 at 06.26	1	HMAS Albany log	Partial	s. 33(a)(i) s. 37(2)(b)
5.	16/07/2013 at 12.11	1	HMAS Warramunga log	Partial	s. 33(a)(i)
6.	16/07/2013 at 12.11	1	HMAS Warramunga log (2)	Partial	s. 33(a)(i)
7.	16/07/2013 at 13.10	1	HMAS Albany log (1)	Partial	s. 33(a)(i) s. 37(2)(b)
8.	16/07/2013 at 13.10	1	HMAS Albany log (2)	Partial	s. 33(a)(i) s. 37(2)(b)
9.	16/07/2013 at 13.13	1	HMAS Albany log (1)	Partial	s. 33(a)(i) s. 37(2)(b)
10.	16/07/2013 at 13.13	1	HMAS Albany log	Partial	s. 33(a)(i)
11.	16/07/2013 at 13.34	1	HMAS Albany log	Partial	s. 33(a)(i) s. 37(2)(b)
12.	16/07/2013 at 14.05	1	HMAS Warramunga log	Partial	s. 33(a)(i) s. 37(2)(b)
13.	16/07/2013 at 15.36	1	HMAS Albany log	Partial	s. 33(a)(i)
14.	16/07/2013 at 16.03	1	HMAS Warramunga log	Partial	s. 33(a)(i) s. 37(2)(b)
15.	16/07/2013 at 17.00	1	HMAS Warramunga log	Partial	s. 33(a)(i)
16.	16/07/2013 at 18.02	1	HMAS Albany log (1)	Partial	s. 33(a)(i)
17.	16/07/2013 at 18.02	1	HMAS Albany log (2)	Partial	s. 33(a)(i)
18.	16/07/2013 at 18.07	1	HMAS Warramunga log	Partial	s. 33(a)(i)
19.	16/07/2013 at 18.23	1	HMAS Warramunga log	Partial	s. 33(a)(i)

	Date of document	No. of pages	Description	Decision on release	
20.	16/07/2013 at 18.25	1	HMAS Warramunga log	Partial	s. 33(a)(i) s. 37(2)(b)
21.	16/07/2013 at 18.33	1	HMAS Albany log	Partial	s. 33(a)(i)
22.	16/07/2013 at 18.37	1	HMAS Warramunga log	Partial	s. 33(a)(i)
23.	16/07/2013 at 18.42	1	HMAS Albany log	Partial	s. 33(a)(i)
24.	16/07/2013 at 18.53	1	HMAS Warramunga log	Partial	s. 33(a)(i)
25.	16/07/2013 at 19.18	1	HMAS Warramunga log	Partial	s. 33(a)(i) s. 37(2)(b)
26.	16/07/2013 at 19.25	1	HMAS Warramunga log	Partial	s. 33(a)(i)
27.	16/07/2013 at 19.43	1	HMAS Warramunga log	Partial	s. 33(a)(i)
28.	16/07/2013 at 20.23	1	HMAS Warramunga log	Partial	s. 33(a)(i)
29.	16/07/2013 at 20.52	1	HMAS Warramunga log	Partial	s. 33(a)(i)
30.	16/07/2013 at 20.53	1	HMAS Albany log	Partial	s. 33(a)(i)