



24 October 2018

**In reply please quote:**

FOI Request: FA 18/06/01374

File Number: ADF2018/149101

Dear [REDACTED]

**Freedom of Information (FOI) request - Access Decision**

On 28 June 2018, the Department of Home Affairs (the Department) received a request for access to document 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**

On 28 June 2018, you requested access to the following:

*Documents relating to the boat intercepted by Australian authorities in the past two months which was reported in the media to be carrying 131 people from Sri Lanka. In particular documents or any other form of communication indicating:*

- *From where did the boat depart before being intercepted.*
- *-What happened to the occupants of the boat ('boat occupants') after it was intercepted? How many were children?*
- *For how long did the boat occupants remain under the control of the Australian authorities and under what conditions were they kept?*
- *What was the nature of the interviews they undertook?*
- *What questions were asked in the interviews, the interview template, what was the purpose of the interviews, how long did they last on average, was the person conducting the interviews on board the Australian boat, were interpreters used, how many boat occupants claimed asylum, how many were found to be owed protection according to Australian law or the Refugees Convention, how many were granted asylum?*
- *How many were medically unfit to be interviewed?*
- *After the boat occupants ceased to be held by the Australian authorities, what happened next. How did they depart? Where did they go? .*

On 13 July 2018 the Department sought to clarify the scope of your request, and you advised you were interested in the processes applied when a boat is intercepted by Australian authorities and one or more passengers make a claim for asylum/ a refugee protection claim.

You indicated you would like to modify the first paragraph of your request as follows:

*Documents relating to the last boat intercepted by Australian authorities which carried people who requested asylum or protection under the Refugees Convention ....*

On 27 July 2018, we advised you that in order for the Department to be able to process your request under the FOI Act, we need to be able to identify documents that contain the information you are seeking access to. The FOI Act provides a right to access existing documents, or in certain circumstances, information contained within database systems that can routinely be reported on. As your request presented a series of questions, it was difficult for the Department to identify the precise nature of the documents you are seeking access to. In order to address your request at the present time, the Department would effectively have to search and retrieve a large number and broad range of documents, and there may be some manual collation of information required to provide you with a response, which the FOI Act does not require us to do.

We sought to clarify the scope of your request to ensure that we understood the nature of the documents you are seeking access to.

On the basis that you had previously indicated that you are “interested in the processes applied when a boat is intercepted by Australian authorities and one or more passengers make a claim for asylum/ a refugee protection claim”, the Department indicated that it understood your request to be for the following:

*A copy of any policy or procedural documents that set out the processes to be applied when a person on a boat intercepted by Australian authorities makes a claim for asylum and/or a refugee protection claim.*

On 9 August 2018, you responded agreeing to revise your request to the following:

*A copy of any policy or procedural documents that set out the processes to be applied when a person on a boat intercepted by Australian authorities makes a claim for asylum and/or a refugee protection claim; and*

*Documents relating to the implementation of these processes in relation to the last boat intercepted by Australian authorities which carried a person or persons who made a claim for asylum and/or a refugee protection claim.*

You indicated however that if the additional part of the request again takes the search beyond what is feasible, you asked that your request proceed without it.

## **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 document or to amend or annotate records.

### 3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the document 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 document to which you sought access

### 4 Document in scope of request

The Department has identified one document as falling within the scope of the first part of your amended request. This document was in the possession of the Department on 28 June 2018 when your request was received. This document is the Procedural Instruction for Individualised assessments. An individualised assessment is used to determine whether *non-refoulement* obligations exist, in circumstances where a person on a vessel or reasonably suspected by a maritime officer to have been on such a vessel when it was detained under section 69 of the *Maritime Powers Act 2013* may in turn be detained and taken to another destination under section 72 of the *Maritime Powers Act 2013*.

The scope of the second part of your request remains broad, and potentially would capture a very large number of documents. Noting that you indicated you would proceed without that part of your request in those circumstances, I have proceeded to finalise a decision on access on the basis that your request does not include the second part.

### 5 Decision

The decision in relation to the document in the possession of the Department which fall within the scope of your request is to release one document in part with deletions.

### 6 Reasons for Decision

Detailed reasons for my decision are set out below.

My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

#### 6.1 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 the parts of the document marked 's47E(d)' 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 the operational methodology 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 the Department's operational methodologies 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.

Accordingly, I have decided that parts of the document 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.

## **6.2 The public interest – section 11A of the FOI Act**

As I have decided that parts of the document 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 document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does not 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 document.
- I am satisfied that you do not require access to the document in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the document:

- 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 operational methodologies and procedures 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 operational activities and procedures in that regard is not compromised or prejudiced in any way. 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.

## **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:

OR  
By email to: [foi.reviews@homeaffairs.gov.au](mailto:foi.reviews@homeaffairs.gov.au)

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](mailto: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](mailto:foi@homeaffairs.gov.au).



**Authorised Decision Maker  
Department of Home Affairs**