



8 November 2018

In reply please quote:

FOI Request: FA 18/07/01356

File Number: ADF2018/16497

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 26 July 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:

- *Policy and operational instructions/guidelines (not published on LEGEND), memorandums and directions and internal correspondence held by the Refugee, Citizenship and Multicultural Programs Division directly concerning the processing of Protection visa applications made by the 2018 Commonwealth Games athletes.*
- *Compliance related policy and Operational instructions/guidelines (not published on LEGEND), memorandums and directions and internal correspondence specifically relating to the 2018 Commonwealth Games athletes between the timeframe 15 April 2018 to 26 July 2018..*

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)

4 Documents in scope of request

The Department has identified 36 documents as falling within the scope of your request. These documents were in the possession of the Department on 26 July 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 five documents in full
- Release 27 documents in part with deletions
- Exempt four documents in full from disclosure

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 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 27 July 2018, 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. That information has been regarded as irrelevant to your request.

In addition, some documents make reference to multiple issues, of which the Commonwealth Games athletes is one issue. The parts of the documents that do not relate to the issue of the Commonwealth Games athletes are considered irrelevant to your request.

As such, I decided that parts of 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 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 a document is 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 documents 35 and 36 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.

6.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act provides that a document is conditionally exempt 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

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

Document 7 contains advice, opinions and recommendations prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of Department. This advice, opinion and recommendation was provided as part of the functions of both the Department and the Australian government.

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

I have decided that the information is conditionally exempt 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 in that regard below

6.4 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 documents 20, 35 and 36 and parts of the remaining documents 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 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 the Department's operational 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.

Some information marked 's47E(d)' consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

I have decided that documents 20, 35 and 36 together with the parts of the remaining documents marked 's47E(d)' 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.

6.5 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 document 26 and parts of the remainder of the documents marked 's47F' would disclose personal information relating to third parties. This information consists of names, nationalities and other personal identifying information.

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 documents concerning policy, operational instructions/guidelines and directions 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 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 in that regard below.

6.6 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 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.

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

- disclosure of the parts of the document that are conditionally exempt under **section 47C** of the FOI Act could reasonably be expected to prejudice the ability of the Department to provide full and frank advice to stakeholders in future deliberations. I am of the view that a precedent of public disclosure of 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. I consider that the public interest in protecting the process of providing free and frank advice and recommendations during deliberative processes has, on balance, more weight, than the public interest that might exist in disclosing those actual deliberations.
- 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 consider that this factor weighs heavily against disclosure.
- disclosure of the operational email addresses contained in the documents would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. The Department has established avenues in place for members of the public to contact when they

have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter. I consider that this factor weighs heavily against disclosure of this conditionally exempt information.

- 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.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that this factor weighs heavily against disclosure of the personal information contained within these documents.

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

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 18/07/01356

| | Date of document | No. of pages | Description | Decision on release | |
|----|--------------------|--------------|---|--------------------------------------|-------------------------------|
| 1. | 11/12/2017 | 6 | Email Subject: RE: FOR ACTION: 2018 Commonwealth Games - PV guidance Attachments: <ul style="list-style-type: none"> img-Z04085604-0001 (refer doc 2 below3 below img-Z04085827-0001 (refer doc 3 below) | Release relevant information in full | 22(1)(a)(ii) |
| 2. | Undated | 6 | DIMA Standard Operating Procedures for Persons seeking asylum/protection – Melbourne 2006 Commonwealth Games Department of Immigration and Border Protection Scenario Table – Approaches by persons seeking asylum/refugee protection in Australia | Release in part | 47E(d) |
| 3. | Undated | 1 | Arrival at the border Further visa applications onshore | Release in full | |
| 4. | 12/12/2017 1357 | 7 | Email Subject: Fwd: FOR ACTION: 2018 Commonwealth Games - PV guidance Attachments: <ul style="list-style-type: none"> Draft - Gold Coast 2018 Commonwealth Games - Contact Centre and Client Services Staff (refer document 5 below) DRAFT Weekly Team Brief - Submission - Gold Coast 2018 Commonwealth Game (refer document 6 below) | Release in part | 22(1)(a)(ii) 47E(d) |
| 5. | Undated | 1 | Gold Coast 2018 Commonwealth Games Information for Contact Centre and Client Services Staff | Release in full | |
| 6. | Undated | 1 | Weekly Team Brief – Submission Template | Release in part | 22(1)(a)(ii) 47E(d) |
| 7. | 14/12/2017 1544 | 8 | Email Subject: RE: Re: FOR ACTION: 2018 Commonwealth Games - PV guidance | Release in part | 22(1)(a)(ii) 47C 47E(d) |
| 8. | 6/02/2018 1712 | 1 | Email Subject: Commonwealth Games internal comms Attachments: <ul style="list-style-type: none"> Gold Coast 2018 Commonwealth Games - QLD Police (refer document 9 below) Gold Coast 2018 Commonwealth Games - contact centre and client service (refer document 10 below) | Release relevant information in full | 22(1)(a)(ii) |

| | Date of document | No. of pages | Description | Decision on release | |
|-----|--------------------|--------------|--|--------------------------------------|------------------------|
| 9. | Undated | 1 | Gold Coast 2018 Commonwealth Games Information for Queensland Police | Release in full | |
| 10. | Undated | 1 | Gold Coast 2018 Commonwealth Games Information for Contact Centre and Client Services staff | Release in full | |
| 11. | 7/02/2018 1024 | 1 | Email Subject: Commonwealth Games - advice regarding protection/asylum enquiries Attachments: <ul style="list-style-type: none">Gold Coast 2018 Commonwealth Games - QLD Police (refer document 9 above) | Release relevant information in full | 22(1)(a)(ii) |
| 12. | 09/02/2017 0853 | 6 | Email Subject: RE: Notes from Commonwealth Games teleconference - 06/02/2018 Attachments: <ul style="list-style-type: none">Commonwealth Games internal comms (refer document 8 above) | Release relevant information in full | 22(1)(a)(ii) |
| 13. | 05/03/2018 1159 | 6 | Email Subject: RE: Notes from Commonwealth Games teleconference - 06/02/2018 Attachments: <ul style="list-style-type: none">Commonwealth Games (refer document 14 below) | Release relevant information in full | 22(1)(a)(ii) |
| 14. | Undated | 5 | Commonwealth Games – PV application arrangements | Release in full | |
| 15. | 07/03/2018 1708 | 2 | Email Subject: RE: Escalation of any potential PV applicants | Release in part | 22(1)(a)(ii) 47E(d) |
| 16. | 15/03/2018 1524 | 2 | Email Subject: Draft ideas on Commonwealth Games processing steps | Release relevant information in full | 22(1)(a)(ii) |
| 17. | 15/03/2018 1608 | 2 | Email Subject: RE: Commonwealth Games Attachments: <ul style="list-style-type: none">Draft ideas on Commonwealth Games processing steps (refer document 16 above)Commonwealth Games (refer document 14 above) | Release relevant information in full | 22(1)(a)(ii) |
| 18. | 19/03/2018 1815 | 3 | Email Subject: RE: RCU - MIR Plan Comm Games | Release in part | 22(1)(a)(ii) 47E(d) |

| | Date of document | No. of pages | Description | Decision on release | |
|-----|--------------------|--------------|---|--------------------------------------|------------------------|
| 19. | 19/03/2018 1840 | 3 | Email Subject: Commonwealth Games (RHVMD response) Attachments: <ul style="list-style-type: none"> RCu - MIR Plan v4 Comm Games (refer document 20 below) Commonwealth Games (refer document 14 above) RE: RCU – MIR Plan Comm Games (refer document 18 above) | Release in part | 22(1)(a)(ii) 47E(d) |
| 20. | Undated | 23 | Operational document | Exempt in full | 47E(d) |
| 21. | 20/3/2018 1250 | 4 | Email Subject: RE: Commonwealth Games (RHVMD response) | Release in part | 22(1)(a)(ii) 47E(d) |
| 22. | 06/04/2018 1542 | 3 | Email Subject: FW: Managing the tracking Protection visa applications associated with the 2018 Commonwealth Games | Release relevant information in full | 22(1)(a)(ii) |
| 23. | 09/04/2018 1238 | 2 | Email Subject: For Info: Signed Minute - Protection Visa Applications - 2018 Gold Coast Comm Games Attachments: <ul style="list-style-type: none"> 043.1 Minute - Protection Visa Applications - 2018 Gold Coast Comm Games signed by FAS RHVM.tr5 (refer document 24 below) | Release relevant information in full | 22(1)(a)(ii) |
| 24. | 26/03/2018 | 27 | Minute – Protection visa applications – 2018 Gold Coast Commonwealth Games | Release in part | 22(1)(a)(ii) 47E(d) |
| 25. | 16/04/2018 1341 | 5 | Email Subject: FW: FOR CONSIDERATION: PV input for Operation Attachments: <ul style="list-style-type: none"> Detainee List 16APR2018 (refer document 26 below) | Release in part | 22(1)(a)(ii) 47E(d) |
| 26. | 16/04/2018 | 2 | Detainee List 16APR2018 | Exempt in full | 47F |
| 27. | 16/04/2018 1718 | 3 | Email Subject: RE: Commonwealth Games - PV reporting | Release relevant information in full | 22(1)(a)(ii) |
| 28. | 16/04/2018 1801 | 4 | Email Subject: RE: RHVMD monthly performance reporting - HPO narrative Attachment: <ul style="list-style-type: none"> 201803 - HPO EL2 comments (refer document 29 below) | Release in part | 22(1)(a)(ii) 47F |
| 29. | Undated | 2 | HPO Branch | Release in part | 22(1)(a)(ii) 47F |

| | Date of document | No. of pages | Description | Decision on release | |
|-----|------------------|--------------|--|--------------------------------------|------------------------|
| 30. | 22/03/2018 | 7 | Extraordinary Weekly Team Brief | Release in part | 22(1)(a)(ii) 47E(d) |
| 31. | 20/04/2018 | 2 | Announcements - Integrity and Risk | Release in part | 22(1)(a)(ii) 47E(d) |
| 32. | 18/05/2018 | 3 | Announcements – Humanitarian Program Integrity and Risk | Release in part | 22(1)(a)(ii) 47E(d) |
| 33. | 19/07/2018 | 3 | Announcements - National Allocation Priorities for July-September 2018 | Release relevant information in full | 22(1)(a)(ii) |
| 34. | 26/07/2018 | 3 | Announcement – Update: Quality Control checking | Release relevant information in full | 22(1)(a)(ii) |
| 35. | 10/05/2018 | 5 | Operational Plan | Exempt in full | 37(2)(b) 47E(d) |
| 36. | 15/06/2018 | 5 | Updated Operational Plan | Exempt in full | 37(2)(b) 47E(d) |