



12 November 2018

**In reply please quote:**

FOI Request: FA 18/08/00800  
File Number: ADF2018/17690

Dear [REDACTED]

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

On 15 August 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:

*All meeting minutes from the Transitory Person's Committee in 2017 and 2018, including the full names of all attendees.*

**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

#### 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 15 August 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 to 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)(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.

The information contained in the document relates to the Nauru Regional Processing Centre. The Republic of Nauru is a sovereign nation and the Government of Nauru is responsible for regional processing in Nauru.

I consider that releasing the information marked 's33(a)(iii)' would adversely impact on the ability of the Department to maintain good working relations with the Government of Nauru. This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australian Government's relationship with the Government of Nauru.

I have decided that the parts of the documents redacted and marked 's33(a)(iii)' are exempt from disclosure under section 33(a)(iii) of the FOI Act.

## **6.2 Section 42 of the FOI Act – Legal Professional Privilege**

Section 42 of the FOI Act provided that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that the information marked 's42' in the documents comprises confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of these documents is not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege.

I have decided that parts of the documents redacted and marked 's42' are exempt from disclosure under section 42 of the FOI Act.

## **6.3 Section 47E of the FOI Act – Operations of Agencies**

### ***Substantial adverse effect on the management or assessment of personnel***

**Section 47E(c)** 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 management or assessment of personnel by an agency.

The Department operates in a position of trust within the border environment and as such the highest standard of conduct must be encouraged and maintained. The Department's Professional Standards Framework promotes the highest of standards of professional conduct expected of the Department's workforce. Contained within the professional standards framework, is the integrity framework which includes measures designed to protect our workforce from criminal influence and to mitigate the potential for corruption risk. Any adverse effect to the effectiveness of the Department's ability to manage its personnel within its integrity framework exposes the Department to potential integrity risk which would result in a substantial adverse effect on the operations of the Department. This extends to the Department's contracted services providers.

At times, the policy space that this Department operates in can be highly controversial and divisive and in some circles, an unpopular aspect of government policy. The Department and its contracted services providers operate in a highly sensitive operational environment. As such, affording protection to its staff, including the staff of contracted service providers, is a high priority for the Department.

Staff names which are not in the public domain, and direct contact details, are not routinely published outside the Department in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

The disclosure of staff names and direct contact details outside the Department could expose those members of staff to unsolicited approaches by individuals with criminal affiliations and may result in serious risks to the security and integrity of the Department's lawful activities. There have also been documented cases of members of staff of the Department being harassed and receiving personal threats to their safety.

I am therefore satisfied that the likelihood of a threat from unknown individuals to members of staff is based not based on intangible or hypothetical threats.

The Department has a primary duty of care to ensure, so far as is reasonably practical, the health and safety of its officers, including the staff of its contracted services providers, under the *Work Health and Safety Act 2011* (WHS Act). The Department must ensure, as far as is reasonably practicable, that the health and safety of other persons is also not put at risk from work carried out as part of the conduct of the Department.

I am of the view that the disclosure of the names of staff of both the Department and its contract services providers, contained within the documents and which are marked 's47E(c)' could impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This this would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department.

I have decided that the parts of the documents redacted and marked 's47E(c)' are conditionally exempt under section 47E(c) 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 at paragraph 6.5 below.

#### **Substantial adverse effect on the proper and efficient conduct of operations**

**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 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 this Department and its Contracted Service Providers. Any disclosure resulting in the prejudice of the effectiveness of the operational methods and procedures used by the Department and its Contracted Service Providers would result in the need to change those methods and/or procedures to avoid jeopardising their future effectiveness.

I have decided that the parts of the documents redacted and 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 at paragraph 6.5 below.

#### **6.4 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 section 4 of the FOI Act and section 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 consists of personal information concerning private individuals, and includes health 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 have also had regard to the fact that that the personal information is health information and consider this to be an important factor when considering whether disclosure of the information to you would be unreasonable.

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 at paragraph 6.5 below.

#### **6.5 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.

Disclosure 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 following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the conditionally exempt information under **section 47E(c)** of the FOI Act could reasonably be expected to result in potential threats to members of staff both of the Department and its Contracted Service Providers from unknown individuals. It also raises the risk of inappropriate unsolicited approaches, personal attacks and harassment to those individuals. I am satisfied that these types of threats and risks are based on evidence that such threats and inappropriate unsolicited approaches occur. I consider that there is a strong public interest in protecting staff of both the Department and its Contracted Service Providers from such threats and inappropriate approaches.
- It would be contrary to the public interest to release information which has the potential to adversely affect the Department's ability to manage its integrity framework. This would in turn expose the Department to potential risks which would or could prejudice the Department's ability 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 role in managing the security and integrity of Australia's borders is not prejudiced in this way.

- I also consider that there is a strong public interest in the Department being able to ensure it is able to maintain its primary duty of care, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). A failure to do so by the Department would potentially result in a breach of the WHS Act, which can result in personal liability for individuals as well as liability for the Department as a whole. A failure by the Department to ensure it has upheld its duty of care to workers under the WHS Act would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department. This factor weighs heavily against the disclosure of the information contained within the documents.
- Finally, I am mindful of the fact that the FOI Act does not control, restrict or limit the subsequent use or further dissemination of information released under the FOI Act. It is noted that the FOI applicant in this case routinely publishes the names of staff of the Department, without consent to do so, in media articles. This has created additional stress for staff working in certain environments, and my decision that disclosure of names contained in these documents would be unreasonable has a protective element to it with that in mind.
- I do not consider that there is demonstrable relevance between the names of the officers contained within these documents that are conditionally exempt under section 47E(c) and the affairs of government. I am satisfied that disclosure of the staff names contained which are conditionally exemption is likely to do no more than excite or satisfy the curiosity of people about the officers whose names were to be disclosed.
- Disclosure of the conditionally exemption information under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice operational activities 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 is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- 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. Section 6 of the Privacy Act 1988 defines *sensitive information* to include health information about an individual. 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:

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



12/11/2014

**Authorised Decision Maker**  
**Department of Home Affairs**

**ATTACHMENT A**

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

FOI request: FA 18/08/00800

	<b>Date of document</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on release</b>	
1.	16/05/2017	4	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47E(d) 47F
2.	26/05/2017	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
3.	20/06/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
4.	11/08/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47E(d) 47F
5.	30/08/2017	4	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47E(d) 47F
6.	01/09/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
7.	11/09/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
8.	6/10/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
9.	20/11/2017	4	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
10.	20/11/2017	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
11.	4/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
12.	6/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
13.	14/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F

	Date of document	No. of pages	Description	Decision on release	
14.	20/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
15.	22/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
16.	02/01/2017	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
17.	17/1/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
18.	24/1/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
19.	14/3/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
20.	3/5/2017	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
21.	24/05/2018	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
22.	7/6/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
23.	13/6/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
24.	20/6/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F
25.	28/6/2018	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
26.	06/07/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F
27.	11/7/2018	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F

	<b>Date of document</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on release</b>	
28.	23/07/2018	3	Transitory Persons Complex Case Review Committee	Release in part	42 47E(c) 47F
29.	27/7/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
30.	08/08/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47E(d) 47F



13 November 2018

**In reply please quote:**

FOI Request: FA 18/08/01639

File Number: ADF2018/186109

Dear [REDACTED]

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

On 30 August 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:

*Any minutes from meetings of the transitory persons committee between 1 December 2017 and August 31 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)
- 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 received a number of requests for access to Minutes from the Transitory Persons Committee. These requests have been processed concurrently and one set of documents identified and assessed. As such, some of the documents provided to you in response to your request may be outside the timeframes you have stipulated in the scope of your request.

The Department has identified 30 documents as being relevant to your request. These documents were in the possession of the Department on 31 August 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 to 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***

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The information contained in the document relates to the Nauru Regional Processing Centre. The Republic of Nauru is a sovereign nation and the Government of Nauru is responsible for regional processing in Nauru.

I consider that releasing the information marked 's33(a)(iii)' would adversely impact on the ability of the Department to maintain good working relations with the Government of Nauru. This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australian Government's relationship with the Government of Nauru.

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At times, the policy space that this Department operates in can be highly controversial and divisive and in some circles, an unpopular aspect of government policy. The Department and its contracted services providers operate in a highly sensitive operational environment. As such, affording protection to its staff, including the staff of contracted service providers, is a high priority for the Department.

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### **Substantial adverse effect on the proper and efficient conduct of operations**

**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.

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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 section 4 of the FOI Act and section 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 consists of personal information concerning private individuals, and includes health 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 have also had regard to the fact that that the personal information is health information and consider this to be an important factor when considering whether disclosure of the information to you would be unreasonable.

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 at paragraph 6.5 below.

#### **6.5 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.

Disclosure 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 following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the conditionally exempt information under **section 47E(c)** of the FOI Act could reasonably be expected to result in potential threats to members of staff both of the Department and its Contracted Service Providers from unknown individuals. It also raises the risk of inappropriate unsolicited approaches, personal attacks and harassment to those individuals. I am satisfied that these types of threats and risks are based on evidence that such threats and inappropriate unsolicited approaches occur. I consider that there is a strong public interest in protecting staff of both the Department and its Contracted Service Providers from such threats and inappropriate approaches.
- It would be contrary to the public interest to release information which has the potential to adversely affect the Department's ability to manage its integrity framework. This would in turn expose the Department to potential risks which would or could prejudice the Department's ability 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 role in managing the security and integrity of Australia's borders is not prejudiced in this way.

- I also consider that there is a strong public interest in the Department being able to ensure it is able to maintain its primary duty of care, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). A failure to do so by the Department would potentially result in a breach of the WHS Act, which can result in personal liability for individuals as well as liability for the Department as a whole. A failure by the Department to ensure it has upheld its duty of care to workers under the WHS Act would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department. This factor weighs heavily against the disclosure of the information contained within the documents.
- Finally, I am mindful of the fact that the FOI Act does not control, restrict or limit the subsequent use or further dissemination of information released under the FOI Act. It is noted that the FOI applicant in this case routinely publishes the names of staff of the Department, without consent to do so, in media articles. This has created additional stress for staff working in certain environments, and my decision that disclosure of names contained in these documents would be unreasonable has a protective element to it with that in mind.
- I do not consider that there is demonstrable relevance between the names of the officers contained within these documents that are conditionally exempt under section 47E(c) and the affairs of government. I am satisfied that disclosure of the staff names contained which are conditionally exemption is likely to do no more than excite or satisfy the curiosity of people about the officers whose names were to be disclosed.
- Disclosure of the conditionally exemption information under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice operational activities 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 is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- 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. Section 6 of the Privacy Act 1988 defines *sensitive information* to include health information about an individual. 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:

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



13/11/2018

**Authorised Decision Maker  
Department of Home Affairs**

**ATTACHMENT A**

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

FOI request: FA 18/08/00800

	Date of document	No. of pages	Description	Decision on release	
1.	16/05/2017	4	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47E(d) 47F
2.	26/05/2017	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
3.	20/06/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
4.	11/08/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47E(d) 47F
5.	30/08/2017	4	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47E(d) 47F
6.	01/09/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
7.	11/09/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
8.	6/10/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
9.	20/11/2017	4	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
10.	20/11/2017	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
11.	4/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
12.	6/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
13.	14/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F

	<b>Date of document</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on release</b>	
14.	20/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
15.	22/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
16.	02/01/2017	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
17.	17/1/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
18.	24/1/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
19.	14/3/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
20.	3/5/2017	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
21.	24/05/2018	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
22.	7/6/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
23.	13/6/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
24.	20/6/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F
25.	28/6/2018	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
26.	06/07/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F
27.	11/7/2018	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F

	<b>Date of document</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on release</b>	
28.	23/07/2018	3	Transitory Persons Complex Case Review Committee	Release in part	42 47E(c) 47F
29.	27/7/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
30.	08/08/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47E(d) 47F





13 November 2018



**In reply please quote:**

FOI Request: FA 18/10/00530

File Number: ADF2018/182870

Dear 

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

On 27 August 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 requested access to the following documents:

*The dates of the last five such cases [instances where unqualified officers of your Department have queried the urgent advice of professionally qualified carers concerning the welfare of children detained at the RPC on Nauru], the nature of the urgent advice, the professional qualifications of the advisor, and the professional qualifications of the person or persons querying that advice, or instructing such querying please. Where the child has been the subject of more than one instance of urgent advice, I would like the information for each instance, please. By "urgent", I mean where the advisor has described or indicated the advice as urgent.*

On 6 September 2018, you indicated that you were withdrawing this request.

On 9 October 2018, you indicated that you wished to "renew" that original request, and you reaffirmed that you were seeking access to the following documents:

- 1) *Non-identifiable details of the last five cases where Ms Hampton has rejected or recommended against the urgent advice of a doctor, psychologist or other professional qualified in the health sciences concerning a detainee at a regional processing centre.*

- 2) *Documents which allow one to learn over what period decisions were made without a properly qualified Chief Medical Officer, together with the non-personably identifiable details of those cases.*
- 3) *Documents which allow one to learn whether decisions made without a properly qualified Chief Medical Officer are being reviewed and if so, whether this is being done urgently.*
- 4) *Documents which allow one to learn whether as a result of any reviews, where it is found that wrong decisions were made, there are steps being taken to provide restitution.*
- 5) *Documents which allow one to learn whether, in light of the precedents of recent court decisions mandating that children be brought back to Australia, Ms Hampton's Division is urgently reviewing other cases with children in similar grave circumstances, to assess whether these children should be treated similarly.*
- 6) *A copy of Ms Hampton's Statement of Duties.*
- 7) *Details of Ms Hampton's qualifications, particularly those in the medical or psychological or social sciences.*

Whilst part 1 of your request was substantively the same as your original request, parts 2-7 were in addition to that scope.

The Transitory Persons Committee (TPC) meets to discuss and make a recommendation to the Assistant Commissioner, Detention and Offshore Operations Command, about the transfer of a transferee, refugee or non-refugee from Papua New Guinea (PNG) or Nauru to Australia for medical treatment in accordance with policy.

As such, the Department has interpreted part 1 of your request to be for access to the Minutes from the TPC. The Terms of Reference for the TPC have been released by the Department under the FOI Act, and will shortly be published on the Department's disclosure log under reference FA 18/04/00848.

## **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

#### 4 Documents in scope of request

As outlined above, the Department has interpreted part 1 of your request to be a request for access to the Minutes of the TPC, for the period May 2017 to August 2018.

The Department has received a number of requests for access to these Minutes and your request has been processed concurrently with those requests.

The Department has identified 30 documents as being relevant to part 1 of your request. These documents were in the possession of the Department on 31 August 2018 when your request was received.

In relation to parts 2-5 of your request, the Department has undertaken relevant searches, and in so far as the TPC minutes do not address those parts of your request, the Department holds no documents that would be relevant.

In relation to parts 6 and 7 of your request, these parts will be processed separately and a stage 2 decision will be issued shortly.

**Attachment A** is a schedule which describes the documents relevant to part 1 of your request 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 to 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 24A Requests may be refused if documents cannot be found, do not exist or have not been received***

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has undertaken reasonable searches in relation to your request and that no documents relevant to parts 2-5 of your request were in the possession of the Department when your FOI request was received. As such I am refusing access to the documents requested by you in parts 2-5 of your request based on the application of section 24A of the FOI Act.

##### 6.2 ***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.

The information contained in the document relates to the Nauru Regional Processing Centre. The Republic of Nauru is a sovereign nation and the Government of Nauru is responsible for regional processing in Nauru.

I consider that releasing the information marked 's33(a)(iii)' would adversely impact on the ability of the Department to maintain good working relations with the Government of Nauru. This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australian Government's relationship with the Government of Nauru.

I have decided that the parts of the documents redacted and marked 's33(a)(iii)' are exempt from disclosure under section 33(a)(iii) of the FOI Act.

### **6.3 Section 42 of the FOI Act – Legal Professional Privilege**

Section 42 of the FOI Act provided that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that the information marked 's42' in the documents comprises confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of these documents is not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege.

I have decided that parts of the documents redacted and marked 's42' are exempt from disclosure under section 42 of the FOI Act.

### **6.4 Section 47E of the FOI Act – Operations of Agencies**

#### ***Substantial adverse effect on the management or assessment of personnel***

**Section 47E(c)** 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 management or assessment of personnel by an agency.

The Department operates in a position of trust within the border environment and as such the highest standard of conduct must be encouraged and maintained. The Department's Professional Standards Framework promotes the highest of standards of professional conduct expected of the Department's workforce. Contained within the professional standards framework, is the integrity framework which includes measures designed to protect our workforce from criminal influence and to mitigate the potential for corruption risk. Any adverse effect to the effectiveness of the Department's ability to manage its personnel within its integrity framework exposes the Department to potential integrity risk which would result in a substantial adverse effect on the operations of the Department. This extends to the Department's contracted services providers.

At times, the policy space that this Department operates in can be highly controversial and divisive and in some circles, an unpopular aspect of government policy. The Department and its contracted services providers operate in a highly sensitive operational environment. As such, affording protection to its staff, including the staff of contracted service providers, is a high priority for the Department.

Staff names which are not in the public domain, and direct contact details, are not routinely published outside the Department in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

The disclosure of staff names and direct contact details outside the Department could expose those members of staff to unsolicited approaches by individuals with criminal affiliations and may result in serious risks to the security and integrity of the Department's lawful activities. There have also been documented cases of members of staff of the Department being harassed and receiving personal threats to their safety.

I am therefore satisfied that the likelihood of a threat from unknown individuals to members of staff is based not based on intangible or hypothetical threats.

The Department has a primary duty of care to ensure, so far as is reasonably practical, the health and safety of its officers, including the staff of its contracted services providers, under the *Work Health and Safety Act 2011* (WHS Act). The Department must ensure, as far as is reasonably practicable, that the health and safety of other persons is also not put at risk from work carried out as part of the conduct of the Department.

I am of the view that the disclosure of the names of staff of both the Department and its contract services providers, contained within the documents and which are marked 's47E(c)' could impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This this would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department.

I have decided that the parts of the documents redacted and marked 's47E(c)' are conditionally exempt under section 47E(c) 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 at paragraph 6.5 below.

### **Substantial adverse effect on the proper and efficient conduct of operations**

**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 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 this Department and its Contracted Service Providers. Any disclosure resulting in the prejudice of the effectiveness of the operational methods and procedures used by the Department and its Contracted Service Providers would result in the need to change those methods and/or procedures to avoid jeopardising their future effectiveness.

I have decided that the parts of the documents redacted and 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 at paragraph 6.5 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 section 4 of the FOI Act and section 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 consists of personal information concerning private individuals, and includes health 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 have also had regard to the fact that the personal information is health information and consider this to be an important factor when considering whether disclosure of the information to you would be unreasonable.

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 at paragraph 6.6 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.

Disclosure 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 following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the conditionally exempt information under **section 47E(c)** of the FOI Act could reasonably be expected to result in potential threats to members of staff both of the Department and its Contracted Service Providers from unknown individuals. It also raises the risk of inappropriate unsolicited approaches, personal attacks and harassment to those individuals. I am satisfied that these types of threats and risks are based on evidence that such threats and inappropriate unsolicited approaches occur. I consider that there is a strong public interest in protecting staff of both the Department and its Contracted Service Providers from such threats and inappropriate approaches.
- It would be contrary to the public interest to release information which has the potential to adversely affect the Department's ability to manage its integrity framework. This would in turn expose the Department to potential risks which would or could prejudice the Department's ability 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 role in managing the security and integrity of Australia's borders is not prejudiced in this way.
- I also consider that there is a strong public interest in the Department being able to ensure it is able to maintain its primary duty of care, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). A failure to do so by the Department would potentially result in a breach of the WHS Act, which can result in personal liability for individuals as well as liability for the Department as a whole. A failure by the Department to ensure it has upheld its duty of care to workers under the WHS Act would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department. This factor weighs heavily against the disclosure of the information contained within the documents.
- Finally, I am mindful of the fact that the FOI Act does not control, restrict or limit the subsequent use or further dissemination of information released under the FOI Act. It is noted that the FOI applicant in this case routinely publishes the names of staff of the Department, without consent to do so, in media articles. This has created additional stress for staff working in certain environments, and my decision that disclosure of names contained in these documents would be unreasonable has a protective element to it with that in mind.
- I do not consider that there is demonstrable relevance between the names of the officers contained within these documents that are conditionally exempt under section 47E(c) and the affairs of government. I am satisfied that disclosure of the staff names contained which are conditionally exemption is likely to do no more than excite or satisfy the curiosity of people about the officers whose names were to be disclosed.
- Disclosure of the conditionally exemption information under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice operational activities 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 is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.

- 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. Section 6 of the Privacy Act 1988 defines *sensitive information* to include health information about an individual. 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:

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



13/11/2018.

**Authorised Decision Maker  
Department of Home Affairs**

**ATTACHMENT A**

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

FOI request: FA 18/08/00800

	Date of document	No. of pages	Description	Decision on release	
1.	16/05/2017	4	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47E(d) 47F
2.	26/05/2017	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
3.	20/06/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
4.	11/08/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47E(d) 47F
5.	30/08/2017	4	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47E(d) 47F
6.	01/09/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
7.	11/09/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
8.	6/10/2017	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
9.	20/11/2017	4	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
10.	20/11/2017	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
11.	4/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
12.	6/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
13.	14/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F

	<b>Date of document</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on release</b>	
14.	20/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
15.	22/12/2017	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
16.	02/01/2017	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
17.	17/1/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
18.	24/1/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
19.	14/3/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
20.	3/5/2017	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
21.	24/05/2018	3	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
22.	7/6/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
23.	13/6/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
24.	20/6/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F
25.	28/6/2018	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 47E(c) 47F
26.	06/07/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F
27.	11/7/2018	2	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47F

	<b>Date of document</b>	<b>No. of pages</b>	<b>Description</b>	<b>Decision on release</b>	
28.	23/07/2018	3	Transitory Persons Complex Case Review Committee	Release in part	42 47E(c) 47F
29.	27/7/2018	2	Transitory Persons Complex Case Review Committee	Release in part	47E(c) 47F
30.	08/08/2018	3	Transitory Persons Complex Case Review Committee	Release in part	33(a)(iii) 42 47E(c) 47E(d) 47F

