



10 August 2018

BY EMAIL: [REDACTED]

In reply please quote:

FOI Request: FA 17/04/00432

File Number: ADF2017/39262

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 11 April 2017, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

On 20 December 2017 the Home Affairs Portfolio, including the Department of Home Affairs, was formally established. The Department of Home Affairs includes the entirety of the Department of Immigration and Border Protection, the Australian Border Force and the Office of Transport Security from within the Department of Infrastructure and Regional Development. It also includes specific functions from the Attorney-General's Department, the Department of Social Services and the Department of the Prime Minister and Cabinet.

As such a decision has now been made on your request by the Department of Home Affairs (the Department).

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:

Recordings of the asylum seeker assessment interview performed in relation to a dual protection visa applicants later subject to the RRTA appeal case 1216820, 1216828 [2014] RRTA 209 (12 March 2014).

Do not require any personal, identifying information relating to the two asylum seekers.

I will accept a transcript in place of an AV recording, if one exists.

On 1 June 2018 in your application for Information Commissioner review you submitted:

...I do not require any personal, identifying information relating to the two asylum seekers, and will accept a transcript in place of an AV recording, if one exists. Essentially, the review has been denied on privacy grounds. As noted in the original request, I am happy to receive a redacted transcript or edited AV recording to guard against privacy concerns.

On 27 June 2018 the Office of the Information Commissioner had advised the Department in writing:

It appears that the applicant is prepared to accept a written list of the questions.

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
- the Department's guidance material on the FOI Act.

4 Documents in scope of request

In accordance with section 17 of the FOI Act, the Department has made a transcript from two sound recordings in order to produce two documents that contain information that falls within the scope of your request. The material produced in the documents existed in the possession of the Department on 11 April 2017 in an audio recording format when your FOI 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

An access refusal decision on the FOI request was made on 17 May 2017. Section 55G of the FOI Act allows for a revocation or variation of an access refusal decision during a review by the Information Commissioner:

55G Procedure in IC review—revocation or variation of access refusal decision

*(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original** decision) in relation to a request or an application under*

section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised** decision) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 26AA (documents affecting Norfolk Island intergovernmental relations), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now made a revised decision under section 55G(1)(a).

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 transcripts containing questions from two applicant interviews 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.

In making this decision I note the following:

- The interviews in question were conducted by a single case officer in 2012 and some of the lines of questioning used in these interviews were inappropriate.
- The interviewing officer has been counselled about their conduct during the interviews in question.

- The exemption under s47E(d) of the FOI Act is no longer relevant as the Department's approach to supporting decision makers undertaking interviews with lesbian, gay, bisexual, transgender and intersex (LGBTI) protection visa applicants has shifted significantly since 2012.
- All applications for protection visas are assessed against criteria set out in the *Migration Act 1958* (the Act) and the Migration Regulations. All protection claims are assessed individually on their own merit, by taking into consideration the particular circumstances of the applicant and conditions in the country from which they seek protection.
- The Department recognises that LGBTI people may experience particular acts of persecution, significant harm and discrimination specific to, and because of, their sexual orientation and/or gender identity.
- The Department also recognises that claims related to sexual orientation or gender identity are complex to assess due to their personal nature.
- The Department has strengthened its decision support tools and guidelines, and provided additional training, on assessing LGBTI claims and conducting interviews in a sensitive manner, for example:
 - in April 2016, training on assessing claims by sexual and gender minorities was provided to Protection visa decision makers by the Organization for Refuge, Asylum and Migration;
 - in December 2016, a training package on assessing LGBTI claims was developed and made available to all PV decision makers;
 - in January 2017, new guidelines were published on assessing claims related to sexual orientation and gender identity;
 - in April 2017, Practical Guidelines on Interviewing were developed to provide decision makers with guidelines on working with vulnerable applicants and conducting interviews in a sensitive manner.
- The Department continues to review the implementation of the guidelines on assessing LGBTI claims through quality control and assurance processes.

6.1 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 the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify third parties through names and would disclose their place of residence.

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. As this information is only known to a limited group of people, the individuals concerned are not known to you or to the public at large. This information is not available from publicly accessible sources.

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.

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

- The 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 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 as the relevant agency.

9 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.



Sally Macourt
A/g Assistant Secretary
Humanitarian Program Capabilities Branch
Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT* 1982****FOI request:** FA 17/04/00432**File Number:** ADF2017/39262

No.	Pages	Description	Decision on release	
1.	1	Transcript of interview questions with Applicant A	Released in part	S 47(F)(1)
1.	2	Transcript of interview questions with Applicant A	Released in full	
1.	3-18	Transcript of interview questions with Applicant A	Released in part	S 47(F)(1)
1.	19	Transcript of interview questions with Applicant A	Released in full	
2.	1-9	Transcript of interview questions with Applicant B	Released in part	S 47(F)(1)
2.	10	Transcript of interview questions with Applicant B	Released in full	
2.	11-17	Transcript of interview questions with Applicant B	Released in part	S 47(F)(1)