



3 August 2018

**In reply please quote:**

FOI Request: FA 18/01/00512

File Number: ADF2018/7351

Dear [REDACTED]

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

On 23 November 2017 the Attorney-General's 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 now includes specific functions from the Attorney-General's Department, including the functions relating to the subject matter of your FOI request. As such, following the Machinery of Government changes, your request was transferred to the Department of Home Affairs (the Department) on 17 January 2018.

The purpose of this letter is to provide you with the decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following documents:

*All papers and minutes from consultations held to establish the latest version of the Australian Victims of Overseas Terrorism Principles.*

**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)
- consultation responses from third parties consulted in accordance with the FOI Act
- 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**

The Department has identified 14 documents as falling within the scope of your request. These documents were in the possession of the Attorney-General's Department on 23 November 2017 when your request was received.

These documents consist of a summary of issues paper prepared upon receipt of submissions received in relation to consultations that were conducted in 2012/2013 to establish the Social Security (Australian Victim of Terrorism Overseas Payment) Principle 2013 (the 2013 AVTOP Principles), being the latest version of these Principles.

I have also understood your request to be for any submission papers received from that consultation process. There are 13 submissions received from various stakeholders who were consulted as part of the establishment of the 2013 AVTOP Principles.

The Department holds no Minutes that would be captured by your request.

**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 11 documents in full
- Release two documents in part with deletions
- Exempt one document 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 17 January 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.

In addition, document 2 includes correspondence that is not part of the submission received from the individual, but consists of administrative emails forwarding that submission internally within the Department.

I have therefore decided that parts of documents marked 's 22(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 33 of the FOI Act – Documents affecting National Security, Defence or International Relations**

**Section 33(b)** provides that a document is an exempt document if disclosure would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Commonwealth.

The Information Commissioner Guidelines state that information is communicated in confidence by or on behalf of another government if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Where the information is, in fact, confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations.

The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access to that communication.

An agreement to treat documents as confidential does not need to be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communications.

Having considered these factors, I am satisfied that the information contained within the document subject to this request was communicated in confidence by or on behalf of another government, and was received by the Australian Government under an understanding of confidentiality. There was clear general understanding between the relevant parties that the communication would be treated in confidence.

**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.

As such, I have decided that the release of document 5 would divulge information communicated in confidence by or on behalf of a foreign government to the Commonwealth of Australia and that if released, disclosure would, or could reasonably be expected to, cause damage to the Australian Government's international relations.

I have decided that document 5 is exempt from disclosure under sections 33(b) and 33(a)(iii) of the FOI Act.

As part of my consideration in this matter, I have consulted with the Department of Foreign Affairs and Trade which has provided advice which supports the application of this exemption to document 5.

### **6.3 Section 47B(a) of the FOI Act – Commonwealth-State relations**

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure of the document:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth ...

A number of documents relevant to your request consist of submissions provided by State Government agencies. These State Government agencies have been consulted as part of the decision making process for this request. These State Government agencies have all indicated that their submissions were provided to the Department in confidence, and disclosure would therefore result in divulging information or matter communicated in confidence by them to the Government of the Commonwealth. For the most part, these State Government agencies have also indicated that they consider there to be an element of public interest in the disclosure of the majority of the information contained in their submissions.

There are two parts to document 14 for which there is considered to be a public interest in not divulging that information, and as such, the release of that particular information would damage the working relationships between the Commonwealth and its State Government partners.

I have therefore decided that parts of document 14 are conditionally exempt under section 47B(a) of the FOI Act and I have included my reasoning in regard to the public interest factors 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 s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in document 2 would disclose personal information relating to a third party. The information within the document would reasonably identify a person through their personal circumstance.

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 party 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 individual concerned is not generally known to be associated with the consultations that occurred in relation to the 2013 AVTOP Principles. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third party would be relevant to the broader scope of your request, as you are seeking access to submissions made in relation to the 2013 AVTOP Principles rather than information which wholly relates to private individuals.

I am satisfied that the disclosure of the information within the document would involve an unreasonable disclosure of personal information about an individual.

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.

## **6.5 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, on balance, 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 factors that weigh against the release of the conditionally exempt information in the documents:

- disclosure of limited parts of document 14 that are conditionally exempt under section 47B(a) of the FOI Act could reasonably be expected to prejudice the Commonwealth Government's ability to obtain similar information in the future as states would be less inclined to provide detailed submissions incorporating confidential information about their own government's operations and policies if that information has the potential to be subsequently released publicly. I consider that this factor weighs heavily against disclosure in this instance.
- 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 that individual's right to privacy. I consider that there is a strong public interest in maintaining the privacy of this individual, noting the personal circumstances outlined in their submission.
- 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 the document.

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)



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There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

#### **10 Contacting the FOI Section**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).



**Authorised Decision Maker  
Department of Home Affairs**



## ATTACHMENT A

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

FOI request: FA 18/01/00512

File Number: ADF2018/7351

Doc. No.	Date	No. of pages	Description	Decision on release	
1.	04.01.2013	13	Submissions from SA Commissioner for Victims' Rights	Release relevant information in full	22(1)(a)(ii)
2.	24.01.2013	2	Submission from private individual	Release in part	22(1)(a)(ii) 47F
3.	05.02.2013	3	Submissions from SA Commissioner for Victims' Rights (2)	Release relevant information in full	22(1)(a)(ii)
4.	07.02.2013	2	Submissions from Department of Justice, Communication Operations and Victims Support Agency, Victoria	Release relevant information in full	22(1)(a)(ii)
5.	07.02.2013	2	Submissions from foreign Government	Exempt in full	33(a)(iii) 33(b)
6.	13.02.2018	1	Submissions from ACT Government – Justice and Community Safety	Release relevant information in full	22(1)(a)(ii)
7.	13.02.2013	2	Submission from Australian Medical Association	Release in full	
8.	14.02.2013	2	Submissions from SA Attorney-General's Department	Release relevant information in full	22(1)(a)(ii)
9.	14.02.2013	2	Submissions from NSW Department of Attorney-General and Justice	Release relevant information in full	22(1)(a)(ii)
10.	15.02.2013	7	Submission from Victim Support Service Inc	Release relevant information in full	22(1)(a)(ii)
11.	15.02.2013	5	Submission from QLD Department of Justice and Attorney-General	Release relevant information in full	22(1)(a)(ii)
12.	26.02.2013	2	Submission from the Mental Health Council of Australia	Release relevant information in full	22(1)(a)(ii)
13.	01.03.2013	4	Submission from the Law Council of Australia	Release in full	
14.	2013	8	Summary of issues raised during consultation on draft Principles	Release in part	47B