



4 December 2018

In reply please quote:

FOI Request: FA 18/07/00928

File Number: ADF2018/16031

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 17 July 2018, the Department of Home Affairs (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

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

1 Scope of request

On 17 July 2018, you requested access to the following:

Any reports, surveys, or staff questionnaires addressing working conditions - in particular issues of bullying, harassment and workplace culture - within the ABF, prepared in 2017 and 2018. In particular I seek access to the report known as the 'May Report' addressing these issues within the ABF.

On 22 August 2018 you agreed to revise the scope of your request to:

A copy of the report known as the 'May Report'.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

4 Document in scope of request

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 17 July 2018 when your request was received.

5 Decision

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

6 Reasons for Decision

Detailed reasons for my decision are set out below.

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

6.1 Section 45 of the FOI Act – Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

Parts the document contain material that, if disclosed, would found an action by a person for breach of confidence. This information was provided by Australian Border Force (ABF) officers in an environment where they voluntarily participated in a review, and were provided with assurances that the information provided as part of that review would be held on a confidential basis.

I am satisfied that the nature of the information is inherently confidential as:

- The information is specifically identified by the parties to the review as being confidential
- The information has the necessary quality of confidentiality as it contains information that is not common knowledge or in the public domain
- The information was provided to the Department and its contracted service provider and received on the basis of a mutual understanding of confidence
- If the information was disclosed, it would be without the authority of the participants to the review, and
- Disclosure of the information will likely cause detriment to the officers who contributed to the review process.

I am satisfied that the disclosure of the information within the document would found an action for breach of confidence. As such I have decided that the parts of the document marked 's45' are exempt from disclosure under section 45 of the FOI Act.

6.2 Section 47E of the FOI Act – Operations of Agencies

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.

I consider that the parts of the documents marked 's47E(c)' would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Department, including the ABF.

The staff interviewed in relation to review process were provided with assurances as to the purposes for which the information they were providing was being collected. At no point in time were the individuals concerned provided with any advice or indication that the information had the potential to be released to any third party under the provisions of the FOI Act. As such, the individuals reasonably hold an expectation that the information marked 's47E(c)' in the documents would be treated confidentially.

In the event that the information provided as part of the review process is released under the provisions of the FOI Act, the information has the potential to be published broadly. This disclosure would impact detrimentally on the morale of staff within the immediate business area concerned, and the Department more broadly, and would result in a loss of trust in the ability of the Department to protect their confidential information.

The disclosure of the information provided by the individuals as part of the review process, and the placing of that information in the public domain, could reasonably be expected to impede the degree of cooperation that the Department currently enjoys from staff involved in future reviews, resulting from a loss of confidence in the processes and the Department's ability to manage such matters confidentially in the future. The effectiveness of any review or inquiry process, such as the one undertaken in this instance, relies heavily on individuals having confidence in the processes in place to protect the information they provide and coming forward to participate in those processes. Officers participating in any future reviews undertaken in similar circumstances would have significant reservations about providing full and frank information without candor, if there was the precedent of public disclosure of such information.

Any reluctance on the part of individuals to participate freely in such reviews would have a substantial adverse effect on the ability of the Department to manage its personnel.

As such, I have decided that the information referred to above is 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 6.3 below.

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 parts of the 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, which includes the ABF.

Managing the security and integrity of Australia's borders is integral to the operations of the Department and the ABF. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department, the ABF and its border protection partners within the Home Affairs portfolio.

Any disclosure resulting in the prejudice of the effectiveness of the operational activities involved in securing Australia's borders would result in the need for this Department, and potentially its border protection partners, to change those operational activities to avoid jeopardising their future effectiveness.

As such, I have decided that the information marked 's47E(d)' in the document is 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 6.3 below.

6.3 The public interest – section 11A of the FOI Act

As I have decided that parts of the document are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Having regard to the above:

- I am satisfied that access to the document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does not seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the document.
- I am satisfied that you do not require access to the document in order to access your own personal information.

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

- disclosure of the conditionally exempt information under **section 47E(c)** of the FOI Act could reasonably be expected to prejudice the ability of the Department, and the ABF, to manage future workplace enquiries and reviews. I consider that the disclosure of this information may result in a loss of confidence by staff in the Department's ability to manage confidential information which would have the effect of hindering the future cooperation or participation in those processes. There is a real public interest in this Department, including the ABF, being able to undertake effective reviews, investigations and inquiries of this nature in the future with the full confidence of its staff. An environment which would create a reluctance in staff to participate freely in such reviews would be contrary to the public interest.
- disclosure of the conditionally exempt information under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice the border security operations of the Department and the ABF, and, as a result, the ability of the Department and the ABF to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department and the ABF to conduct its border security operational activities is not compromised or prejudiced in any way and that to do so would be contrary to the public interest.

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 contrary to the public interest and therefore exempt from disclosure under the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

OR By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

9 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

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

10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



Authorised Decision Maker
Department of Home Affairs