



22 October 2018

[Redacted]

In reply please quote:

FOI Request: FA 18/09/00192
File Number: ADF2018/188681

Dear [Redacted]

Freedom of Information (FOI) request - Access Decision

On 3 September 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

You have requested access to the following document:

A KPMG report, partially released under FA 17/07/00010 as document 2 [being the "Review of Regional Cooperation Arrangements in Indonesia 2015"].

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

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 3 September 2018 when your request was received.

5 Decision

I note that the information disclosed under FA 17/07/00010 was released on the basis that it is publicly available. As such, I have decided to again release that specific information to you in this request. I further note that the remainder of the document is not publicly available.

As such, the decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- 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 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.

I consider that the release of the information marked 's33(a)(iii)' in the document(s) would, or could reasonably be expected to cause damage to the Australian Government's international relations.

I am of the view that the disclosure of the document could reasonably be expected to inhibit future negotiations between the Australian Government, a foreign government and an international organisation. The document contains a comprehensive review of the scope and services delivered under the Regional Cooperation Arrangement (RCA). I consider the information relates the combined effort by the International Organization for Migration (IOM) and governments of Australia and Indonesia to combat people smuggling and illegal migration, as well as the provision of services and core activities under the RCA.

I consider that releasing the information marked 's33(a)(ii)' would adversely impact on the ability of the Department to maintain good working relations with the Government of

Indonesia and IOM. This assessment is made considering the nature of the information contained within the document and the nature and extent of the Australian Government's relationship with the Government of Indonesia and IOM.

I have also considered that the information marked 's33(b)' contained within the document was communicated in confidence between the governments of Australia, Indonesia and the IOM under the expectation that such communication would remain confidential. I consider that disclosing the information would divulge information communicated in confidence to the Commonwealth by a foreign government, an agency of a foreign government or an international organisation.

As such I have decided that the information redacted and marked 's33(a)(iii)' and 's33(b)' is exempt from disclosure under section 33 of the FOI Act.

6.2 Section 47 of the FOI Act – Documents disclosing commercially valuable information

Section 47 provides that a document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

In determining whether the information within the documents is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I consider that parts of the document marked 's47(1)(b)' contain information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The document contains information relating to a third party entity that was engaged by the then Department of Immigration and Border Protection to undertake a review of the RCA. I have formally consulted the affected third party under section 27 of the FOI Act. The affected third party has provided submissions that the document contains commercially sensitive and valuable information relating to that entities methodologies, review engagements and specialist industry knowledge in undertaking the review of the RCA. Release of the document will give advantage to the affected third party's competitors resulting in financial risk to the organisation. I have taken into consideration those submissions when making my decision.

I have therefore decided that parts of the document marked 's47(1)(b)' are exempt from disclosure under section 47 of 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
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**