



12 November 2019

Sent by email to: [REDACTED]

In reply, please quote:

FOI request: FA 18/05/00515
File number: ADF2018/53059

Dear [REDACTED],

Freedom of Information (FOI) – Decision on internal review

I refer to your correspondence received by the Department of Home Affairs (the Department) on 3 January 2019, in which you requested an internal review of a decision made by the Department under the *Freedom of Information Act 1982* (FOI Act).

You requested that the Department review its decision dated 3 December 2018, made in relation to documents to which you requested access on 2 May 2018.

1 Scope of original request

On 2 May 2018, you submitted the following request for access to documents under the FOI Act:

1. *All submissions received in response to the Community Refugee Sponsorship Discussion Paper (Department of Immigration and Border Protection, June 2015) [‘the 2015 Discussion Paper’].*
2. *The total number of submissions received in response to the 2015 Discussion Paper and the authoring organisation or person.*
3. *Any information, records, paper documents, electronic records, or the contents of any records, paper documents or electronic records (including copies of such records and documents), held or accessible by the Department of Home Affairs [‘the Department’] in relation to:*
 - a. *Outlining, documenting or summarising submissions received in response to the 2015 Discussion Paper.*
 - b. *Appraising or assessing the submissions received in response to the 2015 Discussion Paper.*
 - c. *Reporting on the Department’s response to submissions received in response to the 2015 Discussion Paper, including but not limited to documents addressing which submissions and/or recommendations were accepted, rejected or considered to be outside the terms of the discussion paper.*

2 Original decision dated 3 December 2018

The Department conducted reasonable searches for all documents falling within the scope of your request. As a result of those searches, the Department identified eighteen (18) documents falling within scope. These documents were in the possession of Department on 2 May 2018, when your FOI request was received.

The Department's original decision in relation to those documents was to:

- Exempt sixteen (16) documents in full under s 47G(1)(a) of the FOI Act
- Exempt one (1) document in part under s 47F(1) and s 47G(1)(a) of the FOI Act
- Exempt one (1) document in part under s 47G(1)(a) of the FOI Act.

3 Request for Internal Review

On 3 January 2019, you requested that the Department conduct an internal review of its original decision. Your request for internal review was as follows:

1. *The Department's assessment of the protection of personal privacy under s47F of the Act in relation to the submissions to the inquiry does not take sufficient account of the fact that these submissions were made to a public inquiry. The submitting organisations' participation in the inquiry, and necessary knowledge that such submission could be made public must be taken into account both in the applying s47F (step one) and also in weighing the public interest factors in deciding on the exemption (step two). The failure to consider the context in which submissions were made has resulted in the Department 'protecting' privacy rather than understanding and weighing the public nature of the documents. In the alternative, if the Department views that the documents include some, limited private information which may be comprised on release of the document, this information should be redacted but the remainder of the submissions to the inquiry should be released.*
2. *The Department's decision to exempt documents on the basis of section 47G Business Affairs, once again does not take sufficient account of the fact that these submissions were made to a public inquiry. The submitting organisations' participation in the inquiry, and necessary knowledge that such submissions could be made public must be taken into account both in the applying s47G and also in weighing the public interest factors in deciding on the exemption. In fact, the public nature of the inquiry would support the opposite conclusion, that submitting groups did not include any commercially sensitive information, which would be required for the document to fit in the Business Affairs conditional exemption.*
3. *In addition to the above, in the Department's reasons regarding Business Affairs at 6.2 the reasons then mention the submissions are in the nature of 'opinions and deliberations.' This confuses the classification of the documents and the reasoning that that they should be conditionally exempt. The reasons fail to state clearly if documents are being exempted on the basis that they reveal deliberative processes or because they disclose business affairs. This represents a misapplication of the FOI Act. Neither conditional exemption should apply to the documents, and if the exemption applies, public interest, because of the public nature of the documents and inquiry process, should weigh in favour of release.*

4 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 departmental records.

In accordance with section 54C(3) of the FOI Act, I have made a fresh decision on your FOI request.

5 Information considered

In reaching my decision, I have considered the following:

- the scope of your request
- the Department's original decision dated 3 December 2018, and the evidence gathered for that decision
- your submissions in relation to your reasons for requesting an internal review;
- the documents falling within the scope of your request
- advice from departmental officers with responsibility for matters relating to the information to which you sought access;
- the FOI Act, and
- the Australian Information Commissioner's guidelines relating to the interpretation, operation and administration of the FOI Act (the FOI guidelines).

6 Internal review decision

As part of the internal review process, the Department conducted additional reasonable searches for all documents falling within the scope of your FOI request.

As a result of those searches, an additional two documents falling within scope were identified, equalling 20 documents in total falling within the scope of your request.

These 20 documents were in the possession of the Department on 3 May 2018, when your FOI request was originally received.

My internal review decision in relation to these documents is to:

- Release fifteen (15) documents in full under the FOI Act
- Exempt one (1) document in full under s 33(b) of the FOI Act
- Exempt one (1) document in part under s 47F(1) of the FOI Act
- Exempt one (1) document in part under s 47G(1)(a) of the FOI Act
- Exempt one (1) document in part under s 33(b), s 47F(1) and s 47G(1)(a) of the FOI Act
- Exempt one (1) document in full under s 34(1)(c) of the FOI Act.

7 Reasons for internal review decision

Note that Page 1 of Document 17 states that a total of 17 submissions were received in response to the Department's 2015 Community Support Programme (CSP) Discussion Paper (the Discussion Paper). Page 1 of Document 18 implies that a total of 17 submissions were received, but upon closer look it can be seen that two different rows of that table both correspond to NSW STARTTS. FOI consulted with the relevant business area in relation to these discrepancies, who confirmed that only 16 submissions were received by the Department.

FOI recently consulted with 14 of the organisations that provided submissions in response to the Discussion Paper, to gauge their views on the potential disclosure of their submissions as part of this FOI process. In the case of the two remaining organisations (GMH Legal and Law Institute Victoria), FOI found that their submissions are already publicly available on their websites. We sent GMH Legal and Law Institute Victoria a courtesy notification about this FOI request and are including their publicly available submissions as part of the documents released with this decision.

My findings of fact and reasons for my decision are explained in paragraphs 7.1 to 7.6 below.

7.1 Section 22(1)(a)(i) of the FOI Act – deletion of exempt material

Section 22(1)(a)(i) of the FOI Act provides (in summary) that:

- a) If an agency or Minister decides:
 - i) to refuse to give access to an ‘*exempt document*’, or a document containing ‘*exempt matter*’ (as defined in s 4 of the FOI Act); and
 - b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that disclosure of the edited copy would not disclose any matter which is exempt;

then the agency must give the applicant access to the edited copy and provide the grounds for the exemptions that have been made.

I have found that five (5) documents falling within the scope of your FOI request contain ‘*exempt matter*’, as defined in s 4 of the FOI Act. I have therefore prepared edited copies of those documents with the exempt matter deleted.

ATTACHMENT A is a Schedule of Documents (the Schedule) that lists the documents falling within the scope of your request, and summarises the Department’s decision on those documents. The Schedule refers to relevant exemptions within the FOI Act that have been applied to the documents.

7.2 Section 33 of the FOI Act – Documents affecting national security, defence or international relations

Section 33(b) of the FOI Act provides (in summary) that a document is an exempt document if its 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 internal organisation to the Government of the Commonwealth, to an authority of the Government of the Commonwealth.

Paragraph 5.42 of the FOI guidelines provides (in part) that information is communicated in confidence by or on behalf of another government or authority, if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Paragraph 5.43 of the FOI guidelines provides that the relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access.

During FOI’s recent consultation process with the relevant organisations, one organisation (meeting the criteria prescribed at s 33(b)) confirmed that at the time of submission, it provided its submission to the Department under the understanding that it was being provided in confidence.

On the basis of the above, I am satisfied that at the time of submission, the document within scope marked 's 33(b)' (Document 1) was communicated, and received by the Department, on the basis of an implied mutual understanding of confidence.

Consequently, I am satisfied that Document 1 is exempt from disclosure under section 33(b) of the FOI Act.

7.3 Section 34 of the FOI Act – Cabinet documents

Section 34 of the FOI Act provides (in part) that:

(1) a document is an exempt document if:

(a) Both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or

(b) it is an official record of the Cabinet; or

(c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or

(d) it is a draft of a document to which paragraph (a), (b), or (c) applies.

I am satisfied that one document falling within the scope of your request (Document 19) was brought into existence for the dominant purpose of briefing the Minister in relation to a document to which paragraph (a) applies.

Paragraph 5.69 of the FOI guidelines provides that a document that is brought into existence for the dominant purpose of briefing a minister on a submission to Cabinet within the meaning of s 34(1)(a), is an exempt document (s 34(1)(c)). The briefing purpose must have been the dominant purpose at the time of the document's creation.

As part of this internal review process, and in accordance with paragraph 5.57 of the FOI guidelines (partially quoted below), I consulted the Department of Prime Minister and Cabinet (DPMC) in relation to the document at issue. DPMC confirmed that their view is that the document meets the criteria prescribed at s 34(1)(c) of the FOI Act, and is therefore exempt pursuant to s 34(1)(c) of the FOI Act.

5.57 The Department of Prime Minister and Cabinet (DPMC) asks that agencies consult the DPMC FOI coordinator on any Cabinet-related material identified as being within the scope of the FOI request.

In light of the above findings of fact, I am satisfied the Document 19 is exempt pursuant to s 34(1)(c) of the FOI Act.

7.4 Section 47F(1) of the FOI Act – Public interest conditional exemptions – personal privacy

Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person, including a deceased 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 the information marked 's 47F(1)' within Document 3 and Document 18 comprises personal information relating to individuals other than yourself. Specifically, the information comprises the following:

- The mobile telephone number of one individual
- The names of some individuals whose names are not otherwise disclosed in the documents approved for disclosure.

The FOI Act states that, when deciding whether the disclosure of personal information would be 'unreasonable', a decision maker must have regard to the following four factors set out in s 47F(2) of the FOI Act:

- a) the extent to which the information is well known
- b) 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
- c) the availability of the information from publicly available resources
- d) any other matters that the agency or Minister considers relevant.

I have considered each of the above four factors. Following these considerations, I am satisfied that the personal information is not well known – but rather, is only known by a limited group of people within the Department possessing a business need to know. I am satisfied that because the personal information is only known by the above-noted limited group, the individuals concerned are not generally known to be associated with the matters discussed within the information. I am also satisfied that the personal information is not available from publicly accessible sources.

For the above reasons, I am satisfied that the disclosure of the personal information marked 's 47F(1)' within Document 3 and Document 18 would involve an unreasonable disclosure of personal information. Consequently, I am satisfied that this information is conditionally exempt pursuant to s 47F(1) of the FOI Act.

In deciding whether this information meets all criteria necessary for the application of s 47F(1), I must turn my mind to consider whether the disclosure of the information would be contrary to the public interest. My considerations in that regard are explained at paragraph 7.6 of this notice – *The public interest*.

7.5 Section 47G of the FOI Act – Public interest conditional exemptions – Business

Section 47G(1)(a) of the FOI Act provides (in summary) that:

- (1) A document is conditionally exempt if its disclosure under the Act would disclose information concerning a person in respect of his or her business or professional

affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

I consider that the information marked 's 47G(1)(a)' within Document 9 and Document 18 comprises information concerning the business, commercial or financial affairs of an organisation. During FOI's recent consultation process with the 16 organisations, this particular organisation confirmed that it does not consent for its name to be disclosed as part of this FOI process.

In light of the above, I am satisfied that the disclosure of the information marked 's 47G(1)(a)' within Document 9 and Document 18 would, or could reasonably be expected to, unreasonably affect that organisation adversely with respect to its lawful business, commercial or financial affairs. I therefore consider that this information is conditionally exempt pursuant to s 47G(1)(a) of the FOI Act.

In deciding whether this information meets all criteria necessary for the application of s 47G(1)(a), I must turn my mind to consider whether the disclosure of that information would be contrary to the public interest. My considerations in that regard are explained at paragraph 7.6 below – *The public interest*.

7.6 *The public interest – section 11A(5) of the FOI Act*

As I am satisfied that some information falling within the scope of your request is conditionally exempt pursuant to s 47F(1) and s 47G(1)(a) of the FOI Act, I am now required to consider whether granting access to that information would be contrary to the public interest.

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

In applying the public interest test, a decision maker must identify and take into account the factors for and against disclosure, and weigh the relevant factors to determine where the public interest lies.

Paragraph 6.5 of the FOI guidelines provides that the public interest is made up of the following five characteristics:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept; where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- related to matters of common concern or relevance to all members of the public, or a substantial section of the public.

Paragraph 6.6 of the FOI guidelines provides that a matter of particular interest or benefit to an individual or small group of people may also be a matter of general public interest.

As prescribed by the FOI Act, I have had regard to the importance of the four 'factors favouring access' provided at s 11B(3) of the Act, being whether granting access to conditionally exempt information would do any of the following:

- a) *promote the 'objects' of the FOI Act (including all the matters set out in s 3 and 3A of the Act);*
- 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 providing access to the conditionally exempt information would promote the objects of the FOI Act.
- I consider that providing access to the conditionally exempt information would not inform debate on a matter of public importance.
- I consider that no insights into public expenditure would be provided through examination of the conditionally exempt information.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

The objects of the FOI Act include promoting Australia's representative democracy by promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities.

While I am satisfied that providing access to the conditionally exempt information would promote the objects of the FOI Act, I do not consider that the importance of promoting the objects of the Act outweighs the Department's equally important obligations to protect certain information when that information meets the exemption criteria prescribed by the Act.

My consideration of factors that I consider to weigh against the disclosure of the conditionally exempt information is explained below.

Factors weighing against the disclosure of the s 47F(1) conditionally exempted information

- I consider that disclosure of the personal information which is conditionally exempt under s 47F could reasonably be expected to prejudice the protection of the right to privacy of the relevant individuals.
- The Department is committed to complying with its obligations under the Privacy Act, which sets out standards and obligations that regulate how the Department must handle and manage personal information. I consider that it is firmly in the interest of the public that the Department upholds the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs heavily against disclosure.

Factors weighing against the disclosure of the s 47G(1)(a) conditionally exempted information

- I consider that disclosure of the personal information which is conditionally exempt under s 47G(1)(a) could reasonably be expected to prejudice the business in question's, right to privacy. Given that this business has not

consent to the disclosure of their name, I consider that the balance of public interest weighs heavily against the disclosure of this information.

I have had regard to the following four *'irrelevant factors'*, set out at section 11B(4) of the FOI Act, which the Act prescribes must not be taken into account when deciding whether giving access to conditionally exempt information would, on balance, be contrary to the public interest:

- 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, or*
- d) *access to the document could result in confusion or unnecessary debate.*

I confirm that I have not taken any of the above factors into account in my decision.

Upon weighing all of the above relevant public interest considerations, I consider that at this point in time and under the current circumstances, the disclosure of the conditionally exempt information within the documents is not in the interest of the public.

Consequently, I am satisfied that the conditionally exempt information at issue is fully exempt pursuant to s 47F(1) and s 47G(1)(a) of the FOI Act.

This now concludes my decision on your request for internal review.

8 Legislation

A copy of the FOI Act is available at:

<https://www.legislation.gov.au/Details/C2017C00251>

9 Your review rights

Under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of the date of this letter. The OAIC recommends using their online FOI review form; however, you can also request a review in one of the following ways:

Post:	FOI Dispute Resolution, GPO Box 5218, Sydney NSW 2001
Fax:	+61 2 9284 9666
Email:	foidr@oaic.gov.au

More information about requesting an OAIC review is located at:

<https://www.oaic.au/freedom-of-information/reviews-and-complaints/information-commissioner-review>

10 Making a complaint

You may complain to the OAIC if you have concerns about how the Department has handled your request under the FOI Act. Your complaint must be made in writing.

The OAIC recommends using their online complaint form; however, you can also submit a complaint via one of the alternative methods noted above.

More information about lodging a complaint to the OAIC is located at:

<https://www.oaic.au/freedom-of-information/reviews-and-complaints/make-an-FOI-complaint/>


11 Contacting the FOI section

The FOI Reviews Team can be contacted by email at:

foi.reviews@homeaffairs.gov.au

Yours sincerely,

(Signed electronically)


Position Number 60007879
Assistant Director
Freedom of Information (FOI) Section
Data Division
Corporate and Enabling Group
Department of Home Affairs

ATTACHMENT A
SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 18/05/00515
File Number: ADF2018/53059

No.	Date received	No. of pages	Description of document	Decision on document	Exemptions applied under the FOI Act
1	21/07/2015	10	Submission from organisation who has expressly confirmed they do consent to the disclosure of their submission	Exempt in full	s 33(b)
2	15/07/2015	16	Submission from GMH Legal	Released in full	N/A
3	26/06/2015	2	Submission from Australian Churches Refugee Taskforce (ACRT)	Exempt in part	s 47F(1)
4	13/07/2015	8	Submission from Adult Migrant English Service (AMES) Australia	Released in full	N/A
5	15/07/2015	7	Submission from Brotherhood of St Laurence (BSL)	Released in full	N/A
6	15/07/2015	7	Submission from The Sabian Mandaean Association in Australia (Mandaean Resource Centre)	Released in full	N/A
7	22/07/2015	14	Submission from Law Institute Victoria (LIV)	Released in full	N/A
8	20/07/2015	9	Submission from Illawarra Multicultural Services (IMS)	Released in full	N/A
9	13/07/2015	1	Submission from organisation who has expressly confirmed they do not consent to the disclosure of their name	Exempt in part	s 47G(1)(a)
10	20/07/2015	13	Submission from Melaleuca Refugee Centre* <i>*Please note that Melaleuca Refugee Centre has consented to the disclosure of their submission under the provision that that it is appropriately referenced and quoted.</i>	Released in full	N/A

			<i>Melaleuca Refugee Centre also requests a copy of the final research paper produced as a result of this FOI request, for their records, in due course.</i>		
11	15/07/2015	11	Submission from Refugee Council of Australia (RCOA)	Released in full	N/A
12	10/07/2015	5	Submission from Migrant Resource Centre (MRC) South Australia	Released in full	N/A
13	15/07/2015	3	Submission from Sanctuary Australia Foundation	Released in full	N/A
14	15/07/2015	6	Submission from Settlement Council of Australia (SCOA)	Released in full	N/A
15	16/07/2015	9	Submission from Settlement Services International (SSI)	Released in full	N/A
16	15/07/2015	8	Submission from NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)	Released in full	N/A
17	Undated	6	Summary of Feedback – The Community Sponsorship Programme Discussion Paper	Released in full	N/A
18	Undated	20	Agency feedback – Community Support Programme discussion paper	Exempt in part	s 33(b) s 47F(1) s 47G(1)(a)
19	10/12/2015	7	Document brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph s 34(1)(a) applies	Exempt in full	s 34(1)(c)
20	10/12/2015	2	Attachment B to the above-noted document	Released in full	N/A