



29 November 2019



In reply please quote:

FOI Request: FA 19/10/00840
File Number: OBJ2019/53754

Dear 

Freedom of Information (FOI) request - Access Decision

On 16 October 2019, the Department of Home Affairs (the Department) received a request for access to documents 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 documents:

All documents held by the Department of Home Affairs created, received or distributed between 13 October 2019 and 16 October 2019 relating to the Crimes Legislation Amendment (Police Powers at Airports) Bill 2019, including, but is not limited to, all documents and communications (including letters, emails and notes of discussion) between the Department, the Minister for Home Affairs and their office, and the Minister representing the Minister for Home Affairs in the Senate and their office

On 11 November 2019, you agreed to narrow the scope of your request to the following:

All documents held by the Department of Home Affairs created, received or distributed on 14 October 2019 relating to the Crimes Legislation Amendment (Police Powers at Airports) Bill 2019. This request includes, but is not limited to, all documents and communications (including letters, emails and notes of discussion) between the Department, the Minister for Home Affairs and their office, and the Minister representing the Minister for Home Affairs in the Senate and their office.

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)

4 Documents in scope of request

The Department has identified 40 documents as falling within the scope of your request. These documents were in the possession of the Department on 16 October 2019 when your request was received.

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 relevant information in 36 documents in full
- Release two documents in part with exempt information deleted
- Exempt two documents in full from disclosure

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 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 16 October 2019, 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.

You also agreed that any duplicate documents are outside the scope of the request. As such, duplicated emails within emails chains have been deleted as not relevant to your request.

Some information within the documents relates to legislation other than the Crimes Legislation Amendment (Police Powers at Airports) Bill 2019, and this information is also regarded as not relevant to your request.

I have decided that parts of the documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have 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 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose deliberative matter relating to the deliberative processes involved in the functions of the Department.

'*Deliberative matter*' includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency.

'*Deliberative processes*' generally involves "*the process of weighing up or evaluating competing arguments or considerations*"¹ and the '*thinking processes –the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.*'²

I am satisfied that documents 13 and 16 and parts of documents 17 and 19 contain advice, opinions and recommendations prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of Department. I am satisfied that this deliberative matter relates to a process that was undertaken within government.

Section 47C(2) provides that "deliberative matter" does not include purely factual material. I am satisfied that the deliberative material is not purely factual in nature.

I am further satisfied that the factors set out in subsection (3) do not apply in this instance.

I have decided that the information is conditionally exempt under section 47C 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 information is conditionally exempt, I am now required to consider whether access to that information would be contrary to the public interest (section 11A of the FOI Act).

Information 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 information.

¹ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

² *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67

In summary, the test is whether access to the conditionally exempt information 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 information 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 following factors that weigh against the release of the conditionally exempt information in the documents:

- disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of the Department to manage future deliberative processes. I consider that the disclosure of this type of deliberative material may hinder future deliberations and decision making processes, and that there is a real public interest in the Department being able to undertake effective deliberations in the future.

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 would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. 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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

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**

ATTACHMENT A
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982
FOI request: FA 19/10/00840

No	Date of document	Description	No. of pages	Decision on release	
1.	14/10/2019 6:08	Email Senate Legislation Program for today - Monday 14 October 2019 - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	1	Release relevant information in full	22(1)(a)(ii)
2.	14/10/2019 9:04	Email Police powers	1	Release relevant information in full	22(1)(a)(ii)
3.	14/10/2019 9:10	Email RE: Police powers	1	Release relevant information in full	22(1)(a)(ii)
4.	14/10/2019 9:19	Email FW: Bills in Parliament next week - 14/10/2019	2	Release relevant information in full	22(1)(a)(ii)
5.	14/10/2019 9:55	Email FW: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachment: - 8776 CW Crimes Legislation Amdt (Police Powers at Airports) Bill 2019 Patrick (refer document 6 below)	2	Release relevant information in full	22(1)(a)(ii)
6.	14/10/2019 08:23	Crimes Legislation Amdt (Police Powers at Airports) Bill 2019	1	Release in full	
7.	14/10/2019 10:15	Email FW: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - 8776 CW Crimes Legislation Amdt (Police Powers at Airports) Bill 2019 Patrick (refer document 6 above)	2	Release relevant information in full	22(1)(a)(ii)
8.	14/10/2019 10:29	Email FW: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - 8776 CW Crimes Legislation Amdt (Police Powers at Airports) Bill 2019 Patrick (refer document 6 above) - [attachment 2 is not relevant to Crimes Legislation Amendment (Police Powers at Airports) Bill 2019]	2	Release relevant information in full	22(1)(a)(ii)
9.	14/10/2019 10:31	Email Bills in Parliament today - 14/10/2019	1	Release relevant information in full	22(1)(a)(ii)
10.	14/10/2019 11:09	Email FW: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	3	Release relevant information in full	22(1)(a)(ii)

No	Date of document	Description	No. of pages	Decision on release	
11.	14/10/2019 11:32	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	4	Release relevant information in full	22(1)(a)(ii)
12.	14/10/2019 11:37	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - Police Powers at Airports Bill - Response to Amendments - Sheet 8776 Senator Patrick (TRIM link to below attachment) - Police Powers at Airports Bill - Response to Amendments - Sheet 8776 Senator Patrick (refer document 13 below)	3	Release relevant information in full	22(1)(a)(ii)
13.	Undated	Police Powers at Airports Bill - Response to Amendments - Sheet 8776 Senator Patrick	2	Exempt in full	47C
14.	14/10/2019 11:37	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	4	Release relevant information in full	22(1)(a)(ii)
15.	14/10/2019 12:07	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - Police Powers at Airports Bill - Summing Up Speech - Senate – 2019 (TRIM link to below document) - Police Powers at Airports Bill - Summing Up Speech - Senate - 2019	4	Release relevant information in full	22(1)(a)(ii)
16.	Undated	Police Powers at Airports Bill - Summing Up Speech - Senate - 2019	2	Exempt in full	47C
17.	14/10/2019 12:10	Email Police Powers - Amendments - Brief Attachments: - Police Powers - Centre Alliance proposed amendments – 8776 (duplicate of content of email)	3	Release in part	22(1)(a)(ii) 47C
18.	14/10/2019 12:15	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	4	Release relevant information in full	22(1)(a)(ii)
19.	14/10/2019 12:20	Email Police Powers at Airports - Revised Summing Up Speech	3	Release in part	22(1)(a)(ii) 47C
20.	14/10/2019 12:21	Email Re-arrangement of Government Business - Senate - 14/10/19	1	Release relevant information in full	22(1)(a)(ii)

No	Date of document	Description	No. of pages	Decision on release	
21.	14/10/2019 12:50	Email RE: NSLEPD Strat Coord	2	Release relevant information in full	22(1)(a)(ii)
22.	14/10/2019 13:17	Email RE: Police Powers at Airports - Revised Summing Up Speech	3	Release relevant information in full	22(1)(a)(ii)
23.	14/10/2019 13:19	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - Police Powers - Centre Alliance proposed amendments – 8776 (refer document 24 below) - 8776 CW Crimes Legislation Amdt (Police Powers at Airports) Bill 2019 Patrick (refer document 6 above)	2	Release relevant information in full	22(1)(a)(ii)
24.	Undated	Response to amendments – Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	3	Release in full	
25.	14/10/2019 13:20	Email FW: SPEAKERS LIST: ANL Legislation Repeal Bill 2019	2	Release relevant information in full	22(1)(a)(ii)
26.	14/10/2019 13:26	Email Police Powers - Speakers List for ANL Bill	2	Release relevant information in full	22(1)(a)(ii)
27.	14/10/2019 13:27	Email FW: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - Police Powers - Centre Alliance proposed amendments – 8776 - 8776 CW Crimes Legislation Amdt (Police Powers at Airports) Bill 2019 Patrick (refer document 6 above)	1	Release relevant information in full	22(1)(a)(ii)
28.	Undated	Police Powers - Centre Alliance proposed amendments – 8776	3	Release in full	
29.	14/10/2019 13:28	Email RE: Police Powers at Airports - Revised Summing Up Speech Attachments: - Police Powers at Airports Bill - Summing Up Speech - Senate – 2019 (refer document 16 above)	4	Release relevant information in full	22(1)(a)(ii)

No	Date of document	Description	No. of pages	Decision on release	
30.	14/10/2019 13:30	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019 Attachments: - Police Powers at Airports Bill - Summing Up Speech - Senate - 2019	3	Release relevant information in full	22(1)(a)(ii)
31.	Undated	Police Powers at Airports Bill - Summing Up Speech - Senate - 2019	2	Release in full	
32.	14/10/2019 13:31	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	1	Release relevant information in full	22(1)(a)(ii)
33.	14/10/2019 13:32	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	3	Release relevant information in full	22(1)(a)(ii)
34.	14/10/2019 13:34	Email RE: CIRCULATED - Crimes Legislation Amendment (Police Powers at Airports) Bill 2019	1	Release relevant information in full	22(1)(a)(ii)
35.	14/10/2019 15:02	Email Police Powers at Airports - Revised Summing Up Speech Attachments: - Police Powers at Airports Bill - Summing Up Speech - Senate – 2019 (refer document 31 above)	1	Release relevant information in full	22(1)(a)(ii)
36.	14/10/2019 17:02	Email FW: UPDATED speakers list: ANL Legislation Repeal Bill 2019	2	Release relevant information in full	22(1)(a)(ii)
37.	14/10/2019 17:14	Email PP@A - Review/Sunset of Div 3A	1	Release relevant information in full	22(1)(a)(ii)
38.	14/10/2019 17:31	Email Reminder Updates WoG talking points, Australia's Response to Terrorism by 10am Tuesday, 15 October 2019 Attachments: - Australia s Response to Terrorism - WoG TPs - 8 October 2019	1	Release relevant information in full	22(1)(a)(ii)
39.	08/10/2019	Talking Points – Australia's response to terrorism	34	Release relevant information in full	22(1)(a)(ii)
40.	14/10/2019 21:02	Email Bills in Parliament today - Outcomes	2	Release relevant information in full	22(1)(a)(ii)