



10 January 2019

**In reply please quote:**

FOI Request: FA 18/06/00357

File Number: ADF2018/369649

Dear [REDACTED]

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

On 7 June 2018, 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:

*'Documents (save for personal information which we consent to being redacted relating to 1) the employment of foreign workers, as at 25 May 2018 at any of the following workplaces; and 2) to any attendance by officers of Border Force on 25 May 2018 at any of the following workplaces:*

- a) Daydream Solar Farm, 586 Strathmore Rd, Springlands QLD 4804;*
- b) Hayman Solar Farm, 586 Strathmore Rd, Springlands QLD 4804;*
- c) Hamilton Solar Farm, Curringa Road, Springlands QLD 4804;*
- d) Whitsunday Solar Farm, Curringa Road, Springlands QLD 4804; and*
- e) Collinsville Solar Farm, Powerhouse Road, Collinsville QLD 4804,*

*Including but not limited to documents revealing the number of foreign workers employed on visas, the type or category of any such visas and the qualifications of those foreign workers (whether or not they held a visa); and file notes, emails, witness statements or other documents recording what officers of Border Force saw, heard and did during their attendance'.*

## **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) and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

## **4 Documents in scope of request**

The Department has identified 27 documents as falling within the scope of your request. These documents were in the possession of the Department on 7 June 2018 when your request was received.

**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 26 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.

### **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 8 June 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.

I have therefore decided that parts of documents marked 's22(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 37 of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety**

Section 37(2)(b) of the FOI Act provides that documents are exempt from disclosure if its disclosure would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would or could reasonably likely to, prejudice the effectiveness of those methods or procedures.

I consider that parts of documents marked '37(2)(b) would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting breaches or evasions of the law and that disclosure would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

It is noted that the Department's role includes managing the security and integrity of Australia's borders. The Department leads the management of risks to Australia's border in close collaboration with other government agencies, including State and Federal law enforcement agencies. As such, the Department's role includes law enforcement functions.

The disclosure of information within these documents would be reasonably likely to impact on ongoing investigative methodology and relationships both domestically and internationally that support Australian government investigative capabilities. The release of this information would prejudice the effectiveness of those methods or procedures, assisting endeavours to evade them and thereby reducing the ability of the Department and other law enforcement agencies to protect the borders of Australia.

I have decided that this information is exempt from disclosure under Section 37(2)(b) of the FOI Act.

## **6.3 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'. 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' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'<sup>1</sup>

The documents 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. These documents contain views and opinions relating to the operations and integrity of the visa program, media enquiry deliberations related to the employment of foreign workers at solar farms in Queensland which also discusses internal Departmental

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<sup>1</sup> See *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

processes to maintain the integrity of the program and methodologies used in identifying associated risks. If this deliberative material was to be disclosed, it would impact on the operations of the Department.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

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 below

#### **6.4 Section 47E of the FOI Act – Operations of Agencies**

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 disclosure of the parts of 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.

I consider the operation of s47E(d) would substantially have an adverse effect on the operations of the Department related to the integrity and operations of the subclass 400 visa program while conducting operational investigations. These are internal departmental processes and if it was to be released it would have an adverse effect in respect of maintaining the integrity of the program. I consider release of this information pertains to specific sensitive operations conducted by the Department in relation to monitoring associated risks to the program. If this information were to be released, it would likely result in considerable damage to the operations of the Department and would result in necessary changes being made relating to how these operations are managed in the future.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. 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.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Accordingly, I have decided that the documents are 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 below.

#### **6.5 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 the documents would disclose personal information of third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment 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 parties 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 individuals concerned is are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to information related to the employment of foreign workers at the solar farms in Queensland rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

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.

## **6.6 Section 47G of the FOI Act – Business Affairs**

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I have considered that part of documents marked '47G(1)(a)' contains information concerning the business, commercial or financial affairs of an organization.

The information is of financial sensitive nature pertaining to business affairs and contractual arrangements related to third parties that is not in the public domain.

In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:

- (a) The extent to which the information is well known;
- (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Department considers relevant.

The information contained within these documents is not in the public domain, the companies concerned are not generally known to be associated with the matters referred to in these documents, and the information is not available from publicly accessible sources, such as the company's website. I am therefore satisfied that the disclosure of the information would, or could reasonably be expected to, unreasonably affect that company in respect of its lawful business, commercial or financial affairs.

I have decided that parts of the documents referred to above are conditionally exempt under section 47G 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.

#### **6.7 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 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.

Disclosure of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

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 could reasonably be expected to prejudice the ability of the Department to manage future program deliberations, processes, inquiries and investigations. I consider that the disclosure of this type of deliberative material may hinder the future cooperation or participation in those processes, and that there is a real public interest in this agency being able to undertake effective investigations and inquiries in the future. This is a factor which I consider strongly weighs against disclosure.
- disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice the efficient conduct of the operations of the Department and law enforcement functions and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its law enforcement functions is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- 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 those individuals' right to privacy.
- 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 these documents.
- disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of third party organisations. I consider that this factor weighs heavily against disclosure.



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)

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).

*signed electronically*



Authorised Decision Maker  
**Department of Home Affairs**

**ATTACHMENT A**

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

**FOI request:** FA 18/06/00357  
**File Number:** ADF2018/369649

<b>No</b>	<b>Date of document</b>	<b>Folio</b>	<b>Description</b>	<b>Decision on release</b>	
1.	29 January 2018	1-5	Email: Re:AMO For Action – Collinsville solar farms	Release in part	s22(1)(a)(ii) s47C s47E(d) s47F s47G(1)(a)
2.	30 January 2018	6-15	Email: Solar projects and documents	Release in part	s22(1)(a)(ii) s47C s47E(d) s47F s47G(1)(a)
3.	2 February 2018	16-22	Emails: AMO For Action – Collinsville solar farms	Release in part	s22(1)(a)(ii) s47C s47E(d)
4.	7 February 2018	23-30	Emails: AMO For Action, - Collinsville solar farms	Release in part	s22(1)(a)(ii) s47C s47E(d)
5.	16 February 2018	31-33	Media Enquiry	Release in part	s22(1)(a)(ii) s47C s47F
6.	February 2018	34-36	Back Pocket Brief	Release in part	s22(1)(a)(ii) s47C
7.	1 March 2018	37-40	Emails: Solar technicians to work on the solar farm	Release in part	s22(1)(a)(ii) s47E(d) s47G(1)(a)
8.	7 March 2018	41-47	Emails: Solar technicians to work on the solar farm	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)

No	Date of document	Folio	Description	Decision on release	
9.	15 March 2018	48-50	Statement of witness	Release in part	s22(1)(a)(ii) s47C s47E(d) s47F s47G(1)(a)
10.	16 March 2018	51-61	Interview notes	Release in part	s22(1)(a)(ii) s47C s47E(d) s47F s47G(1)(a)
11.	16 March 2018	62-63	Summary of solar and wind farm applications	Release in part	s22(1)(a)(ii) s47E(d) s47F s47G(1)(a)
12.	26 March 2018	64-66	Emails: Summary of solar farms	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
13.	28 March 2018	67-70	Meeting brief – Solar Farms and labour hire practices	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
14.	3 April 2018	71-72	Email: constituent contact	Release in part	s22(1)(a)(ii) s47F
15.	4 April 2018	73-77	Email: Further information re Bowen solar farm workers	Release in part	s22(1)(a)(ii) s47C s47E(d) s47F s47G(1)(a)
16.	4 April 2018	78-83	Email: Urgent – FW: MB18-000437	Release in part	s22(1)(a)(ii) s47G(1)(a)
17.	6 April 2018	84-90	Report	Exempt in full	37(2)(b) 47E(d) s47F

No	Date of document	Folio	Description	Decision on release	
18.	9 April 2018	91-92	Email to PMO/SMOs re: Solar farm workers for Hayman and Daydream farm	Exempt in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
19.	18 May 2018	93-97	Email: Subclass 400 visa applications relating to solar and wind farm projects	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
20.	18 May 2018	98-112	Emails: subclass 400 visa applications relating to solar and wind farm projects	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
21.	23 May 2018	113-118	Email: Subclass 400 visa applications relating to solar and wind farms projects	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
22.	25 May 2018	119	Email: Solar farm operation	Release in part	s22(1)(a)(ii) s47C s47E(d) s47G(1)(a)
23.	19 June 2018	120-130	Email: ABC Townsville follow up	Release in part	s22(1)(a)(ii) s47E(d) s47F s47G(1)(a)
24.	19 June 2018	131-141	Email: Request for additional information	Release in part	s22(1)(a)(ii) s47E(d) s47F s47G(1)(a)
25.	19 June 2018	142-150	Email: Urgent – Group of sub 400 visa applications	Release in part	s22(1)(a)(ii) s47C s47E(d) s47F s47G(1)(a)

No	Date of document	Folio	Description	Decision on release	
26.	n/a	151-158	Collinsville summary of workers	Release in part	s47E(d) s47F s47G(1)(a)
27.	n/a	159-165	Summary of solar and wind farms	Release in part	s22(1)(a)(ii) s47E(d) s47F s47G(1)(a)