



25 January 2019

**In reply please quote:**

FOI Request: FA 18/08/01348

File Number: ADF2018/18284

Dear [REDACTED]

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

On 22 August 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:

*Copies of all documents created in the development of a response from the Department to questions BE18/100 and BE18/013 from Budget Estimates hearings on 21/05/2018 and 22/05/2018, including, but not limited to, emails, text messages, and draft responses.*

On 13 November 2018 the Department issued you a notice under section 24AB of the FOI Act. On 15 November 2018, you agreed to reduce the scope of your request by excluding the draft responses, but including emails (but not repetitive threads), text messages, and any other form of communication, eg WhatsApp.

**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)
- 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 59 documents as falling within the scope of your request. These documents were in the possession of the Department on 22 August 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 relevant information in 23 documents
- Release 31 documents in part with exemptions
- Exempt five documents in full from disclosure

### 6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, 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 27 August 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.

On 15 November 2018, you agreed to modify the scope of your request to exclude repetitive email threads.

As such, I have 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 42 of the FOI Act – Legal Professional Privilege**

Section 42 of the FOI Act provided that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that the documents and parts of documents marked 's42' comprise confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of these documents are not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege. I have therefore decided that this information is exempt from disclosure under section 42 of the FOI Act.

## **6.3 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.

Some information marked 's47E(d)' consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which operational areas within the Department are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

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.



#### **6.4 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.

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

- Disclosure of the operational email addresses which are conditionally exempt under section 47E(d) of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. The Department has established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure of the exempt information.



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/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).



**Authorised Decision Maker  
Department of Home Affairs**



## ATTACHMENT A

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

	Date of document	No. of pages	Description	Decision on release	
1.	4/6/2018 1627	4	Email Subject: RE: Au Pair QoNs ownership query	Release in part	s22(1)(a)(ii) 47E(d)
2.	5/6/2018 1017	1	Email Subject: Au pair QONs - SQ18-000392 and SQ18-000502	Relevant information released	s22(1)(a)(ii)
3.	5/6/2018 1134	1	Email Subject: QON SQ18-000502	Relevant information released	s22(1)(a)(ii)
4.	5/6/2018 1356	3	Email Subject: FW: QON SQ18-000502	Exempt in full	s42 (LPP)
5.	5/6/2018 1614	1	Email Subject: QON SQ18-000502 - au pairs	Relevant information released	s22(1)(a)(ii)
6.	12/6/2018 0922	1	Email Subject: QoN	Relevant information released	s22(1)(a)(ii)
7.	12/06/2018 1229	1	Email Subject: QoN	Relevant information released	s22(1)(a)(ii)
8.	12/6/2018 1232	4	Email Subject: RE: Au pair QONs - SQ18-000392 and SQ18-000502	Release in part	s22(1)(a)(ii) 47E(d)
9.	13/6/2018 1620	1	Email Subject: QONs 392 and 502	Release in part	s22(1)(a)(ii) 47E(d)
10.	13/6/2018 1633	2	Email Subject: RE: QONs 392 and 502	Release in part	s22(1)(a)(ii) 47E(d)
11.	13/6/2018 1721	2	Email Subject: RE: QONs 392 and 502	Release in part	s22(1)(a)(ii) 47E(d)
12.	14/6/2018 1009	2	Email Subject: FW: SQ18-000392 Draft response	Release in part	s22(1)(a)(ii) 47E(d)
13.	14/6/2018 1114	1	Email Subject: SQ18-000502	Release in part	s22(1)(a)(ii) 47E(d)
14.	14/6/2018 1141	2	Email Subject: RE: SQ18-000502	Release in part	s22(1)(a)(ii) 47E(d)
15.	14/6/2018 1210	1	Email Subject: FW: SQ18-000392 Draft response	Relevant information released	s22(1)(a)(ii)
16.	14/6/2018 1424	2	Email Subject: RE: SQ18-000392 Draft response	Relevant information released	s22(1)(a)(ii)

	Date of document	No. of pages	Description	Decision on release	
17.	15/6/2018 1532	2	Email Subject: FW: QONs	Relevant information released	s22(1)(a)(ii)
18.	18/6/2018 0908	1	Email Subject: QoNs for urgent edits	Release in part	s22(1)(a)(ii) 47E(d)
19.	18/6/2018 1001	2	Email Subject: FW: QONs [	Relevant information released	s22(1)(a)(ii)
20.	18/6/2018 1022	2	Email Subject: RE: QONs	Relevant information released	s22(1)(a)(ii)
21.	18/6/2018 1142	3	Email Subject: RE: QONs	Relevant information released	s22(1)(a)(ii)
22.	18/6/2018 1201	4	Email Subject: FW: QONs	Release in part	s22(1)(a)(ii) 47E(d)
23.	18/6/2018 1229	2	Email Subject: FW: QoNs for urgent edits	Release in part	s22(1)(a)(ii) 47E(d)
24.	18/6/2018 1308	1	Email Subject: SQ18-000392	Relevant information released	s22(1)(a)(ii)
25.	18/6/2018 1329	3	Email Subject: RE: QoNs for urgent edits	Release in part	s22(1)(a)(ii) 47E(d)
26.	18/6/2018 1331	3	Email Subject: RE: QONs 502	Release in part	s22(1)(a)(ii) 47E(d)
27.	18/6/2018 1343	5	Email Subject: RE: QONs	Release in part	s42 (LPP) 47E(d)
28.	18/6/2018 1635	5	Email Subject: RE: QONs	Release in part	s22(1)(a)(ii) s47E(d)
29.	19/6/2018 1811	1	Email Subject: RE: QONs	Release in part	s22(1)(a)(ii) s47E(d)
30.	6/07/2018 1426	4	Email Subject: RE: QON SQ18-000502	Exempt in full	s42 (LPP) s47E(d)
31.	06/07/2018 1431	5	Email Subject: RE: Au pair QONs - SQ18-000392 and SQ18-000502	Relevant information released	s22(1)(a)(ii)
32.	06/07/2018 1642	7	Email Subject: RE: Au pair QONs - SQ18-000392 and SQ18-000502	Release in part	s22(1)(a)(ii) s47E(d)
33.	06/07/2018 1659	6	Email Subject: RE: QON SQ18-000502	Exempt in full	s42 (LPP)
34.	09/07/2018 1614	1	Email Subject: QoN SQ18-000502	Release in part	s22(1)(a)(ii) s47E(d)
35.	10/07/2018 0955	3	Email Subject: RE: QoN SQ18-000502	Release in part	s22(1)(a)(ii) s47E(d)



	Date of document	No. of pages	Description	Decision on release	
36.	10/7/2018 1043	4	Email Subject: RE: QoN SQ18-000502	Release in part	s22(1)(a)(ii) s47E(d)
37.	11/7/2018 0925	2	Email Subject: FW: Au pair QON - SQ18-000502	Release in part	s22(1)(a)(ii) s47E(d)
38.	11/7/2018 0943	5	Email Subject: RE: QoN SQ18-000502	Release in part	s42 (LPP)
39.	11/7/2018 1708	1	Email Subject: RE: QoN SQ18-000502 - au pair	Release in part	s22(1)(a)(ii) s47E(d)
40.	13/7/2018 1048	3	Email Subject: RE: RFI 21252 - QON SQ18-000502 - changes to statistics provided	Release in part	s22(1)(a)(ii) s47E(d)
41.	16/7/2018 1747	1	Email Subject: Amended QoNs - SQ18-000392 and SQ18-000 502	Release in part	s22(1)(a)(ii) s47E(d)
42.	19/7/2018 1426	1	Email Subject: Amended QoNs [	Release in part	s22(1)(a)(ii) s47E(d)
43.	20/07/2018 1719	2	Email Subject: Re: Au pair QON	Relevant information released	s22(1)(a)(ii)
44.	26/7/2018 1413	1	Email Subject: FW: SQ18-000502	Relevant information released	s22(1)(a)(ii)
45.	26/7/2018 1540	2	Email Subject: RE: Urgent: SQ18-000502	Release in part	s42 (LPP)
46.	27/7/2018 1032	3	Email Subject: Re: Urgent: SQ18-000502	Release in part	s42 (LPP)
47.	27/07/2018 1609	1	Email Subject: SQ18-000502 - Au Pair QON	Relevant information released	s22(1)(a)(ii)
48.	01/08/2018 1420	1	Email Subject: FW: Au pair QON	Relevant information released	s22(1)(a)(ii)
49.	1/8/2018 1632	1	Email Subject: QoN - SQ18-000502	Release in part	s22(1)(a)(ii) s47E(d)
50.	01/08/2018 1642	7	Email Subject: URGENT: QON SQ18-000502 [	Exempt in full	s42 (LPP)
51.	01/08/2018 1703	2	Email Subject: RE: QoN - BE18/100	Relevant information released	s22(1)(a)(ii)
52.	01/08/2018 1705	1	Email Subject: BE18/100	Relevant information released	s22(1)(a)(ii)
53.	01/08/2018 1717	1	Email Subject: QoN SQ18-000502 - au pair	Relevant information released	s22(1)(a)(ii)
54.	01/08/2018 1734	1	Email Subject: QON - BE 18/100	Relevant information released	s22(1)(a)(ii)

	Date of document	No. of pages	Description	Decision on release	
55.	01/08/2018 1744	2	Email Subject: FW: QON - BE 18/100	Relevant information released	s22(1)(a)(ii)
56.	01/08/2018 1745	7	Email Subject: Re: URGENT: QON SQ18-000502	Exempt in full	s42 (LPP)
57.	01/08/2018 1746	8	Email Subject: RE: URGENT: QON SQ18-000502	Release in part	s42 (LPP)
58.	01/08/2018 1751	2	Email Subject: RE: QON - BE 18/100	Relevant information released	s22(1)(a)(ii)
59.	2/08/2018 1250	3	Email Subject: RE: QON - BE 18/100	Release in part	s42 (LPP)