



18 April 2019

**In reply please quote:**

FOI Request: FA 18/12/00010

File Number: ADF2018/23752

Dear [REDACTED]

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

On 30 November 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:

*The KPMG Detention Futures Report, as listed with CN3491006.*

**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
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

#### **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 30 November 2018 when your request was received.

#### **5 Decision**

The decision in relation to the document in the possession of the Department which fall within the scope of your request is to 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 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.

In making my decision, I have had regard to submissions received from KPMG making exemption contentions in relation to the business information contained within the document.

KPMG contends the document contains information relating to its methodologies and specialist industry knowledge. It sets out analysis based on this methodology, details of issues considered to be material to, and details of how it reached its conclusions.

KPMG considers that damage would occur to the value of its commercially valuable information through disclosure of the methodologies and specialist industry knowledge contained in the document, and that the commercial value of that would be destroyed or diminished if that information were disclosed under the FOI Act.

The information contained within the document is valuable for the purpose of carrying on the commercial activities in which KPMG is engaged. The information is relevant to the profitability or viability of the continuing business operations of KPMG. If the information were to be released, it could enable a competitor to obtain a commercial advantage over KPMG.

As such, I am satisfied that the document contains 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.

I have therefore decided that parts of the document are exempt from disclosure under section 47 of the FOI Act.

## **6.2 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.

The document is a report commissioned by the Department to identify risks for the future of the Immigration Detention Network. The Australian Immigration Detention Network has changed significantly since it was first established in excess of 40 years ago, and is now closely related to contemporary risks to national security in Australia.

The Department is responsible for the delivery and management of visa applications, border controls and managing the Australian Government's detention policy for non-citizens who do not hold a valid visa.

It is also responsible for managing the security and integrity of Australia's borders. This role is integral to the operations of the Department, and includes the operation of Australia's Immigration Detention Network. 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 prejudice to the effectiveness of the Department's ability to operate Australia's Immigration Detention Network has the potential to damage the management of current national security risks.

'Security', in the context of Australia's national security, is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time. I consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant. Section 4 of that Act defines 'security' as:

- (aa) *the protection of Australia's territorial and border integrity from serious threats;*

I consider that any disclosure resulting in the prejudice of the effectiveness of the Department's management of its Detention operations, and as a result, its ability to manage contemporary national security risks, would result in a need to change the methods and/or procedures used in that operational environment to avoid jeopardising their future effectiveness.



Accordingly, I have decided that parts of the document 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.

### **6.3 The public interest – section 11A of the FOI Act**

As I have decided that parts of the document 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 document would promote the objects of the FOI Act.
- I consider that the subject matter of the document 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 document.
- I am satisfied that you do not require access to the document 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 document:

- 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 operations related to Australia's Immigration Detention Network.
- As a result, this would have a substantial adverse effect on the ability of the Department to protect Australia's borders and to manage its national security risks.



- I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its Detention operations functions is not compromised or prejudiced in any way.
- I further consider there to be a strong public interest in the Department being able to manage current risks to the national security of Australia.
- As such, I am satisfied that it would be contrary to the public interest to disclose parts of the document which would prejudice of the effectiveness of the Department's management of its Detention operations and its ability to manage contemporary national security risks.

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](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 <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](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**