



30 May 2019

In reply please quote:

FOI Request: FA 19/03/00436

File Number: OBJ2019/18077

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 7 March 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:

I would like to request any details, discussion, documents, emails etc that relate to the amount of skill select invites that will be given to both the 189 and 190 categories in the 2018/19 program year. Both monthly and what is planned for the program year up to date.

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 12 documents as falling within the scope of your request. Eleven documents were in the possession of the Department on 7 March 2019 when your request was received. The twelfth was provided by the business area for context.

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 two documents in full
- Release 10 documents in part with deletions

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 11 March 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.

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 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.'¹

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 the Department, being the SkillSelect program deliberations concerning proposed amendments to SkillSelect invitation rounds. These deliberations form part of the Department's functions.

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.

6.3 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.

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, namely planning for and management of the SkillSelect program.

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.

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

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 vexatious communication and public inquiries which these operational areas 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 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 provide full and frank advice to stakeholders in planning and managing future SkillSelect invitation rounds. 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 reviews and discussions in the future. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- 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/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.

Yours sincerely



ATTACHMENT A

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

FOI request: FA19/03/00436

File Number: OBJ2019/18077

No.	Date of document	No. of pages	Description	Decision on release	
1.	25/07/2018	4	Setting the first SkillSelect invitation round on 11 July 2018 - seeking confirmation of agreed numbers for the round	Release with exemptions	22(1)(a)(ii) 47C(1) 47E(d)
2.	09/08/2018	2	August 2018 SkillSelect Invitation Round	Release with exemptions	22(1)(a)(ii) 47E(d)
3.	06/09/2018	3	September 2018 SkillSelect Invitation Round	Release with exemptions	22(1)(a)(ii) 47E(d)
4.	08/10/2018	3	October 2018 SkillSelect Invitation Round	Release with exemptions	22(1)(a)(ii) 47C(1) 47E(d)
5.		1	Attachment to email of 08/10/2018: Revised Subclass 189 Invitation Requirements	Release in full [irrelevant material excluded]	22(1)(a)(ii)
6.	09/10/2018	1	SkillSelect Invitation Round – 11 October 2018	Release with exemptions	22(1)(a)(ii) 47E(d)
7.	05/11/2018	4	November 2018 SkillSelect Invitation Round	Release with exemptions	22(1)(a)(ii) 47C(1) 47E(d)
8.	16/11/2018	3	Final Allocations for 2018-19 State/Territory and Regional Nominated nomination ceilings	Release with exemptions	22(1)(a)(ii) 47E(d)
9.	05/12/2018	2	SkillSelect Invitation Numbers [December 2018 and January 2019]	Release with exemptions	22(1)(a)(ii) 47C(1)
10.	06/02/2019	2	SkillSelect Invitation Round – February 2019	Release with exemptions	22(1)(a)(ii) 47E(d)

No.	Date of document	No. of pages	Description	Decision on release	
11.	04/03/2019	2	SkillSelect Invitation Round – 10 March 2019	Release with exemptions	22(1)(a)(ii) 47E(d)
12.	03/05/2019	1	Skilled and Migration Program response - FOI request - FA 19/03/00436	Release in full	