



ATTACHMENT A

DECISION RECORD

Request Details

FOI Request: FA 15/08/01440
File Number: ADF2015/44892

Scope of Request

You have requested access to the following documents:

'a copy of a report produced from the I&PS reporting system about all "missed detections" that includes the case ID number, a brief description of the missed detection, the date the report was received, the date in incident occurred and its current status.

This request is limited to the following categories of prohibited and restricted goods:

- 1. Anabolic or androgenic substances (restricted import);*
- 2. Chemical weapons (restricted import);*
- 3. Drugs and narcotics (restricted import);*
- 4. Growth hormones and substances of human or animal origin (restricted import);*
- 5. Kava (restricted import);*
- 6. Knives and daggers (restricted import);*
- 7. Radioactive substances (restricted import);*
- 8. Tablet Presses (restricted import);*
- 9. Therapeutic drugs and substances (restricted import), and*
- 10. Warfare Goods and other Weapons (restricted import).'*

Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

Relevant material

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

Reasons for Decision

My reasoning in relation to the application of each section to particular documents is set out below.

1 Section 22 of the FOI Act – irrelevant to request

I have decided that the deleted parts of the document would disclose information that could reasonably be regarded as irrelevant to your request.

You indicated in your request that the names and/or private details of non-executive staff or other persons are not being sought as part of this request. As such, all personal information relating to individuals has been regarded as not relevant and deleted from the document pursuant to section 22(1)(a)(ii) of the FOI Act.

I have also decided that as your request is for a brief description of the missed detection, information about where the parcel/item was from, where the detection occurred are also not relevant to your request and have also been deleted from the document pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

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.

I consider that the disclosure of parts of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of law enforcement 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 those lawful methods and procedures would require this Department, and potentially other law enforcement agencies, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Accordingly, I have decided that parts of the documents referred to above are conditionally exempt under section 47E(d) of the FOI Act. I must now turn my mind to whether the information would be contrary to the public interest. Please see below my decision with respect to s.11B of the FOI Act.

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 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 has a character of limited public importance. It demonstrates the vigilance of the Department in recording and assessing its operations and adopting an accountability and continuous improvement approach. However, 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.

Disclosure of all aspects of the document would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within ACBPS, 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 factors that weigh against the release of the conditionally exempt information in the document:

- I consider that the 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 law enforcement functions and, as a result, the ability of the Department to protect Australia's borders.
- I acknowledge that there is public interest in there being confidence in the capacity of the Department to undertake that role and there would be a degree of public interest in understanding how failures in the control of the border might occur. However, the number of apparent failures represented in the missed detections and missed alerts report is proportionally small to the number of interactions with passengers and cargo crossing the border.

- Given the general public interest however, I have decided that some information about the missed detection reporting system should be released to demonstrate how the (then) Australian Customs and Border Protection Service managed and reported errors.
- However, the information that I consider to be conditionally exempt would demonstrate operational methodology and potentially disclose any vulnerability within that operational activity.

I note that you may have received more detailed information in the past. The role of my decision to consider the impact of the release of information in the current operating environment. Disclosing this information within the public domain would be of assistance to those with the intent of undertaking criminal activity at the border. I consider that the expert advice I have received that such a disclosure is a real risk in the current border protection and security environment should be heavily weighted.

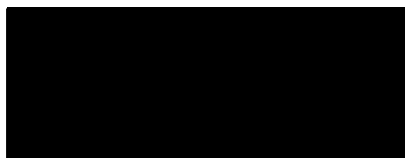
- I consider there to be a very strong public interest in ensuring that the ability of the Department to conduct its law enforcement functions at the border is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.

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.



**Authorised Decision Maker
Department of Immigration and Border Protection**

9 February 2016

ATTACHMENT B

Relevant Legislation

Section 22 - Access to edited copies with exempt or irrelevant matter deleted

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

...

Section 47E - Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

11B - Public interest exemptions—factors

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include 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.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (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.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.