



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 15/12/01734  
File Number ADF2015/69925

#### Scope of request

*Summary documents relating to cases of misconduct by the department's staff finalised (signed off) between October 1, 2014 and October 1, 2015. I only require documents relating to confirmed cases of public service code of conduct breaches where the person's employment has been terminated or the person has left the department before a sanction could be applied.*

*Summary documents refer to documents that summarise the proven allegations against the staff member. I do not require personal identifiers.*

#### Documents in scope

1. After consultation with the relevant business about the scope of your request, I am satisfied that at the time of your application the Department did not hold a discrete document (electronic or hard copy) which fell within the scope of the request.
2. Subsection 17(1) of the Act requires that in such circumstances the Department is to create documents in response to your request, where the creation of such documents would not substantially and unreasonably divert the resources of the Department from its other operations.
3. The relevant business area therefore created a document (Attachment D) to address your request.

#### Authority to make decision

4. 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 Departmental records.

#### Information considered

5. In reaching my decision, I have considered the following:
  - The *Freedom of Information Act 1982*;
  - Departmental files and/or documents (identified above); and
  - The Australian Information Commissioner's guidelines relating to access to documents held by government.

#### Reasons for decision

6. Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

7. This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).
8. Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

**Deletion of exempt material under s.22(1)(a)(i) of the FOI Act**

9. The Schedule of Documents (Attachment B) and the documents released (Attachment D) detail the exemptions that have been applied. Exemptions were applied on the following grounds:

**Section 47F – personal privacy**

10. Section 47F(1) of the Act provides:

*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

*The relevant documents contain 'personal information'*

11. I am satisfied that the document to which you have sought access contains 'personal information'. The relevant material in the document includes:
  - the names and other identifying information of the individuals whose employment was terminated or who resigned following confirmed misconduct; and
  - details of the circumstances of the misconduct which could reasonably lead to identification of the individuals.
12. The information above clearly represents information about identified individuals or individuals who are reasonably identifiable and is personal information.

*Disclosure would involve the 'unreasonable disclosure of personal information'*

13. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.


14. These factors are:

- a) the extent to which the information is well known;
- b) 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;
- c) the availability of the information from publicly accessible sources; and
- d) any other matters that the agency or Minister considers relevant.

15. The personal information in the document is not well known. It is known to those employees who were directly associated with or present at the time of the misconduct, as well as performance management staff involved in managing the misconduct. The information is of a sensitive nature and has not been distributed widely or made publicly available. As such, I consider that disclosure of the personal information in the document would be unreasonable.

***Application of the 'public interest' test***

16. While I have found that the conditional exemption in section 47F(1) of the FOI Act applies to the information outlined in paragraph 11 above, section 11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.
17. In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which point in favour of release. These factors are:
  - a) whether release would promote the objects of the FOI Act;
  - b) whether release would inform debate on a matter of public importance;
  - c) whether release would promote effective oversight of public expenditure; and
  - d) whether release would allow a person to access his or her own personal information.
18. While I acknowledge that release of the documents will promote the objects of facilitating and promoting public access to information, I am satisfied that the content being released from the documents will inform public debate regarding the matters described in the documents. In the circumstances, I consider that the release of individual identifying information would make a negligible further contribution to public debate.
19. In contrast, I consider that the protection of the individual's right to privacy should be given the upmost importance.
20. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the document is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under section 47F of the FOI Act. I confirm that I have not considered the irrelevant factors listed in section 11B(4) of the FOI Act.



Authorised decision maker  
Department of Immigration and Border Protection  
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9 February 2016



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**  
**FOI Request FA 15/12/01734**

No.	Date of document	Pages	Description	Decision on release	
1.	14/01/2016	1	Document created to address the request	Released in part	s.47F(1)

## Attachment C – Extract of relevant legislation (FOI Act)

### 11A Access to documents on request

#### Scope

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

#### Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

(6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
  - (i) under Division 2 of Part IV (exemptions); or
  - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

#### **17 Requests involving use of computers etc.**

(1) Where:

- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
  - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

#### **22 Access to edited copies with exempt or irrelevant matter deleted**

##### **Scope**

(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.

#### Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.

(4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

### **47F Public interest conditional exemptions—personal privacy**

#### General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) 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;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

**qualified person** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following

- (a) a medical practitioner
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;



(e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).