



ATTACHMENT A

DECISION RECORD

Request Details

FOI Request: FA 15/09/00614
File Number: ADF2015/47847

Scope of Request

You have requested access to the following documents:

'Sometime in 2012-13 Customs employed the NOUS group to conduct a staff survey. A brief overview of the results of this review was then released on the Customs intranet by Mr Michael Pezzullo which showed that 22% of staff (almost 1200 officers) had complained of being bullied and harassed.

I require full access to the report provided by NOUS to then Australian Customs and Border Protection Service and any subsequent senior management reviews and reports which shows their response to the NOUS review/report and how they expected to manage and deal with the staff's views in this regard.

I would like these documents to include, but not be limited to, reports, emails (including deleted emails), file entries (file reference(s)/numbers to be provided) and any diary or other contemporaneous notes maintained by the following individuals.

- *Michael Pezzullo*
- *NOUS Group management*
- *Any other Senior Executive Service (SES) staff at the Australian Customs and Border Protection Service*
- *Scott Morrison M.P.*
- *Any other person hereto not mentioned such as lawyers, senior Customs Managers, Customs Directors and accounts and contract staff and any and all Comcare personnel.*
- *All members of the ESU Executive Support Unit*
- *CEO Comcare*
- *Worksafe Australia.'*

Background

The then Australian Customs and Border Protection Service (ACBPS) commenced a reform program in March 2013. On 3 July 2013, the Blueprint for Reform was launched and in August 2013 the ACBPS engaged staff in relation to values, culture and engagement mechanisms as part of that reform process. The Nous Report of October 2013 was as a result of a survey of staff conducted in August 2013. This report was considered by the ACBPS in conjunction with the 2013 State of the Service Employee Census.

In May 2014, the Government announced the consolidation of the ACBPS with the Department of Immigration and Border Protection, and the Reform Program Task Force evolved to the Portfolio Reform Task Force Change Management Team.

I am aware that there was a CustomsNews article published on the ACBPS intranet that drew on the result of the 2013 Nous Report and I have been endeavouring to source that news article. With the consolidation of the ACBPS and the Department on 1 July 2015, significant changes have been implemented to the Department's intranet and CustomsNews articles are no longer accessible on the intranet. I have been endeavouring to source that CustomsNews article from the relevant business area but have yet to receive it. In order to limit further delays in finalising this request, I have made a decision on the release of the documents without reference to that CustomsNews article.

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

I am satisfied that I have been provided with all the documents that are relevant to your request.

The Department has identified six documents that fall within the scope of your request. These documents were in the possession of Department on 3 September 2015 when your FOI request was received.

These documents consist of the Cultural Research Project Findings provided by the Nous Group to the then ACBPS in October 2013, together with a number of documents prepared by the then ACBPS as part of the reform program.

There are no emails, file entries, diary entries or other contemporaneous notes between Mr Pezzullo and the parties named in your request which "show their response to the NOUS review/report and how they expected to manage and deal with the staff's views in this regard".

The schedule at **ATTACHMENT B** sets out the decision on access in relation to the six documents that fall within the scope of your request and, where appropriate, refers to various sections of the FOI Act. 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

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 10 September 2015, 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. As such, I have regarded that information as irrelevant to your request.

I also consider that parts of document 5 are not relevant to your request. Information within this document is broad in nature and covers many aspects of the responsibilities of being an ACBPS officer. Your request is for a copy of the Nous Report and any subsequent senior management reviews and reports which show their response to that report. You have articulated that your particular concerns relate to the bullying and harassment elements of the Nous Report. Parts of document 5 do contain information that relates to work health and safety; ACBPS officers' conduct, specifically in relation to APS Values and Code of Conduct and behaviours; and workplace bullying and harassment. Whilst this document was not created expressly in response to the Nous Report, it was prepared as part of the reform program which was informed by the Nous Report. The parts of the report that could be regarded as relating to workplace bullying and harassment have therefore been released to you. I consider the remainder of the document to be irrelevant to your request. However, the headings for the irrelevant sections have been released to you to provide you with context as to the irrelevance of those particular parts of the document.

As such, I have decided that parts of documents would disclose information that could reasonably be regarded as irrelevant to your request, and have 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.

2 Section 47E of the FOI Act – Operations of Agencies

Section 47E(c) 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 management or assessment of personnel by an agency.

I note that pursuant to section 11C of the FOI Act, the Department must publish, on its website, documents that the Department has given access to under section 11A. The exceptions to this are where the documents contain either personal information or business information.

I consider that the disclosure of parts of document 1 would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Department. The information contained in this document consists of quotations taken from commentary provided by officers in response to an open ended question in the staff survey. Whilst the individuals who have provided this

information cannot be identified from the quotations, and therefore the information cannot be regarded as personal information, the commentary would have been provided by those officers, without the expectation of it being published on a broad basis, that is, to the community at large. As the document must be published on the Department's website following its disclosure to you pursuant to section 11C of the FOI Act, a number of officers may recognize comments that they have made as part of the staff survey.

I am of the view that the placing of this information in the public domain, and thereby setting a precedent of public disclosure of such information, could reasonably be expected to have a substantial adverse effect on the degree of cooperation that the Department might expect to receive from its officers in future similar staff survey.

As such, I have decided that information contained in document 1 is conditionally exempt from disclosure under section 47E(c) 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 at paragraph 3 below.

3 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, in itself, 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.

Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, 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 documents:

- I consider that it would be in the public interest to ensure that officers within this Department feel able to share their thoughts and provide comments as part of staff surveys without concern as to whether those thoughts and comments would be publicly disclosed at a future date. I regard this a factor which strongly weighs against disclosure of this 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 document 1 is not in the public interest and therefore exempt from disclosure under the FOI Act.



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

18 December 2015

ATTACHMENT B

Schedule of Documents

FOI request: FA 15/09/00609

File Number: ADF2015/47799

No	Date of document	No. of pages	Description	Decision on release	
1.	3/10/2013	71	Cultural Research Project Findings Australian Customs and Border Protection Service	Release in part	22(1)(a)(ii) 47E(c)
2.	11/10/2013	15	Executive leadership of the cultural transformation	Release in full	
3.	28/1/2014	6	Operations Committee Action Item	Release in part	22(1)(a)(ii)
4.	February 2014	2	Minute Paper – Whole of Service Handbook	Release in part	22(1)(a)(ii)
5.	January 2014	32	A Professional Service – My Responsibilities	Release in part	22(1)(a)(ii)
6.	March 2014	18	Giving and Receiving Feedback Training with Talking Points: Reform – Cultural Transformation Programme	Release in part	22(1)(a)(ii)

ATTACHMENT C

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:

...

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;

...

Section 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.