



File No: 2014/010940

18 January 2016

**BY REGISTERED MAIL**

Dear 

### **Freedom of Information Request**

I refer to your email dated 28 March 2014 in which you requested access to documents held by the Department of Immigration and Border Protection (at the time, Australian Customs and Border Protection Service) under the *Freedom of Information Act 1982* (the FOI Act).

A decision on your request was made on 13 April 2015 (the 13 April 2015 decision). The purpose of this letter is to notify you of a revised decision on the request made under s 55G of the FOI Act. I am authorised under section 23 of the FOI Act to make decisions to release and to refuse access to exempt documents.

### **Scope of Request**

You have requested access to the following documents:

*"documents in relation to overseas communications activities, where they have been carried out in Indonesia and Malaysia, to dissuade people from becoming involved in maritime people smuggling syndicates, and anti-people smuggling information campaigns in source and transit countries, including:*

- 1. relevant market research reports (authored by Customs and Border Protection, or by other agencies/companies contracted to conduct such research);*
- 2. reports from the IOM (or other agencies/companies/organizations with whom Customs and Border Protection collaborates to design, implement, coordinate or oversee relevant activities) relating to such activities; and*
- 3. reports or briefings written by Customs and Border Protection about such activities (including for example, market research, rationale, design, evaluations and recommendations for the future).*

You have expressly excluded from the scope of your request documents in the form of powerpoint presentations or email correspondence that summarises the reports/briefings. You have also indicated that your request is limited to documents which have become available since your last FOI request, that is, after 30 May 2012. Finally, you have indicated that you are only seeking access to documents in relation to overseas communications activities carried out in Indonesia and Malaysia.

### Decision on access

In the 13 April 2015 decision 70 documents were identified as relevant to the request. You subsequently agreed to exclude 2 of them (documents 49 and 50). I have retained the original document numbering for ease of cross reference. In summary, the effect of my decision is:

- to release further information to you from 50 documents
- to reduce the number of documents over which s 47G (business affairs) claims are made
- to remove s 22 (irrelevance) claims except where the content of the document clearly deals with a topic outside the scope of your request (eg work other than in the specified countries)

An updated schedule of the documents is at **Attachment A** for your reference. The schedule describes each of the relevant documents and also refers to particular exemptions provisions contained in the FOI Act, which have been applied. It also indicates whether there has been a change to relevant exemptions claimed and further information released since the 13 April 2015 decision.

I have provided detailed reasons for my decision below.

### Reasons for Decision

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

#### 1 Section 22(1)(a)(ii) of the FOI Act – irrelevant to request

I have decided that deleted parts of documents numbered 53-55, 59, 61-68 would disclose information that could reasonably be regarded as irrelevant to your request.

Information that has been considered as irrelevant to your request includes:

- information relating to campaigns that do not involve Indonesia and Malaysia, (noting that you have specifically limited your request to Indonesia and Malaysia) or that relates to activities that are outside the scope of your request
- information relating to companies other than the successful tenderer in relation to proposals submitted for a competitive tender for market research activities in Indonesia; and
- information relating to file names and internal server locations of ACBPS documents.

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

## 2 Section 34(3) – Cabinet Documents

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

I consider that parts of documents numbered 57 and 62 contain information that would reveal a Cabinet deliberation. The information in document numbered 57 refers to a submission that was provided to a committee of Cabinet and the precise content of that submission. The information in document 62 reveals the same information. I consider that this information reveals a Cabinet deliberation and is therefore exempt under section 34(3) of the FOI Act. That information has not been officially disclosed.

## 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 parts of documents numbered 1-3, 8-39, 43-47, 51-52, 55, 57-64, 66, 68-70, would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

The documents in question comprise the following:

- reports prepared by the International Organization for Migration (IOM)
- materials prepared by third party service providers, Leo Burnett and Ipsos
- a market research brief prepared as part of competitive tender process for evaluation and market research activities; and
- briefing documents prepared by ACBPS and email correspondence.

### The relevant operations of the Department

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (the Guidelines) explain (at 6.112):

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the public interest factors of accountability and transparency are further weighted towards disclosure.

Case law establishes that the relevant 'operation' extends to the way in which an agency discharges or performs any of its functions (*Diamond and ACARA* [2014] AATA 707 at [120], citing *Searle and Public Interest Advocacy Centre* [1992] FCA 241; (1992) 36 FCR 111).

In this case the relevant operation is the conduct of Operation Sovereign Borders. Operation Sovereign Borders is the name given to a military-led, border security operation supported and assisted by a wide range of federal government agencies. Operation Sovereign Borders has a particular focus on managing the entry into Australia of persons

and dealing with illegal maritime arrivals. It aims to ensure that Australia has effective control of the circumstances in which people enter Australia. In conjunction with the Department of Defence, the Department is responsible for delivering Operation Sovereign Borders objectives through the Joint Agency Task Force within Maritime Border Command. Maritime Border Command operates as part of the Department. Its functions are the Department's functions.

Part of Operation Sovereign Borders is an education and deterrence strategy which aims to prevent individuals engaging in activities that would lead to illegal arrival in Australia. For the purposes of this decision I will describe this as people smuggling. The purpose of the education and deterrence strategy is to ensure that individuals who may be contemplating a people smuggling venture, either as operator or passenger, are aware of the risks and likely outcomes and consequences of undertaking such an activity.

For that strategy to be effective, it needs to be delivered in locations where people who might be the target of approaches to engage in people smuggling activities are located. The Department has entered into contractual arrangements with external services providers to deliver the strategy on the ground. For example, IOM is a contracted service provider who has assisted the Department deliver this strategy in Indonesia. IOM delivers public information campaigns that raise awareness in relevant communities about the dangers and consequences of people smuggling including a community liaison officer program that promotes Australian Government messaging to potential illegal migrants. Another service provider, Ipsos, was engaged to undertake market research activities that seek to assess the effectiveness of communication activities. The purpose of these activities is to limit illegal entry into Australia by heading it off at the source.

#### **The problem with disclosure**

The Department and the contracted service providers have, together, identified the most effective methods for the performance of the education and market research functions which are being undertaken by (in this case) IOM. In my view if the precise details of the methodology involved in the totality of the relationship between the Department and the contracted service providers were publicly known, then I am strongly of the view that their effectiveness will be substantially compromised. As with any education or, in crude terms, marketing campaign, the intention is to inform people (in this case vulnerable people) about the consequences in an effort to change their thinking and behaviour. The point of the function is to persuade people not to engage in people smuggling. If the specific techniques for achieving a persuasive message were revealed, it is likely that the techniques would be less effective because they would be perceived as calculated to aid in the Department's objectives rather than presenting the very real dangers and risks in a manner that has been designed to engage with the target audience.

In addition, I consider it very likely that if the precise details about the way in which the contracted service providers are performing these services, there is a risk of disengagement by the target audience in the delivery of the educational message. Part of the success of the program lies in the ability of the contractors to engage with the target audience in a relatable way. By disclosing intimate details of the obligations and service delivery elements as between the Department and the contractors there is a real risk that the contractors will be perceived as much less relatable, and they may have difficulty achieving engagement with the target audience in a way that is not presently a difficulty. It must be recalled that the contracted service providers have no compulsive powers and rely entirely on goodwill and empathic engagement to deliver the educational and market research functions which they perform on behalf of the Department. A breakdown in the

level of trust or goodwill enjoyed by those entities is likely to substantially adversely impact on their ability to do the job.

I would prefer to be more explicit in my reasons but to go into any further detail would reveal information which is itself exempt. I note s 26(2) of the FOI Act does not require me to include exempt material in my statement of reasons. The Department intends to provide the Information Commissioner with a confidential submission which elucidates this point more clearly.

The documents for which s 47E(d) is claimed reveal key elements of the public information and market research activities, including the methodology and strategy underlying the activities. Their disclosure will have the adverse consequences I have described above. On that basis I consider they are conditionally exempt under s 47E(d) of the FOI Act.

#### **4 Section 47F of the FOI Act – Personal Privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under FOI would involve the unreasonable disclosure of personal information of any person. 'Personal information' has the same meaning as in the *Privacy Act 1988*, being information or an opinion about an identified individual, or an individual who is identifiable. Whether disclosure would be 'unreasonable' is a consideration of a range of factors including:

- the extent to which the information is well known or publicly available, or the individual is known to be associated with the matters in question (s 47F(2) FOI Act)
- contextual considerations such as the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, whether the information has any current relevance, whether disclosure would cause the individual stress and whether disclosure would achieve any public purpose (Guidelines at 6.130-6.131).

Where the information concerned is information about public servants performing their ordinary duties, the Guidelines say (at 6.140):

Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed.

#### **Information about people other than public servants**

Documents 4, 17, 19, 51, 52, 58 and 69 contain images depicting private individuals or other identifying information about other individuals. Those individuals had a reasonable expectation of privacy in connection with these images having regard to the sensitive context in which they were taken and those individuals' connection with humanitarian or international movement interests. The individuals would not have expected their information to be publicly disclosed and it has the potential to cause them stress. I see no public purpose that would be served in disclosure. For these reasons I consider disclosure to be unreasonable. The material is therefore, in my view, conditionally exempt under s 47F of the FOI Act.

## Information about public servants

Documents 1-2, 4, 27, 56, 58-66, 68-69 contain identifying information about public servants involved in undertaking Operation Sovereign Borders activities. I have had regard to the Guidelines and in my view there are special circumstances that arise in this case. The special circumstance is the highly contested nature of the Department's efforts to curb people smuggling and to respond to illegal maritime arrivals. That highly contested environment substantially increases the risk of harassment, annoyance or vilification of Departmental staff who are named as undertaking Operation Sovereign Borders-related work. The Department has in the past had instances where staff involved in dealing with illegal arrivals have been harassed by email and other electronic means in ways which they have found quite distressing and disruptive to their performance of their normal work duties. In my view Departmental staff are entitled to a safe workplace and to be protected from unreasonable interference and harassment when performing a role mandated by, and in accordance with, government policy and legislation but which may be unpopular in certain sections of the community.

Having regard to the balance of the factors that ought to be considered, I note that the identity of these individuals as Operation Sovereign Borders staff is not generally known or available from public sources. Nor, in my view, is any public purpose served by disclosure. If there is to be accountability for the performance of the functions in question (and I accept there is a legitimate interest in this) then it should be at the Departmental level rather than at the level of individual staff members discharging roles delegated to them by, ultimately, the Secretary. On balance I am satisfied that the legitimate interest in disclosure can be met without revealing identifying information about staff, and that the identifying material is unreasonable to disclose. It is therefore conditionally exempt under s 47F of the FOI Act.

## 5 Section 47G of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

According to the Guidelines, for s 47G to apply:

[6.162] [T]he information in question must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking...

[6.169] The use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Parts of documents numbered 4, 54, 68 and 70, contain information concerning the business, commercial or financial affairs of the IOM and Ipsos. The business affairs information about IOM and Ipsos is summarised as follows:

- a tender and associated documentation for Ipsos, and the evaluation of that tender. This information exists in the context of a competitive tender process to enable the ACBPS to select an organisation to undertake evaluation and market research activities in Indonesia. This document has been considered relevant to the scope of your request to the extent that the report contains information about the successful tenderer 'Ipsos'. The material includes a detailed proposal by Ipsos, ratings against evaluation criteria and a narrative evaluation of that proposal which assesses the extent to which the tender satisfied the evaluation criteria;
- information relating to the business capabilities of third party businesses; and
- a progress report to the Australian Customs and Border Protection Service containing information that has been identified by a third party business as being sensitive to its business affairs, namely, it discloses sensitive business relationships with partners, contacts and other agencies; and

In my view the tender and associated documents, including information relating to capabilities, relate to the money-making affairs of these organisations. It reveals the way in which they operate commercially in a competitive market, including in the market for government contracts (see, eg *Secretary, Dept of Workplace Relations & Small Business v The Staff Development & Training Centre Pty Ltd* [2001] FCA 1375).

#### **Unreasonable adverse effect**

I am satisfied that if the business information in those documents were disclosed there would be an adverse effect on the business of IOM and Ipsos. As the tender documents reveal, these companies are competing for the Department's work in a contested marketplace. If information concerning their business models, strategies and capabilities were disclosed, I believe this would likely give their competitors an insight into IOM and Ipsos' business model. IOM and Ipsos would not have the same access to information about their competitors, placing IOM and Ipsos at a competitive commercial disadvantage. I consider this an adverse effect.

In relation to the progress report, I am satisfied that if the business information were disclosed it would have an adverse effect on the third party's business. The business information reveals who, how and when the third party discretely collaborates with other third parties to conduct their business with a view to combatting people smuggling activities in the region. Those relationships, contacts and methods are sensitive to the third party business and, if disclosed, would give competitors an insight into those relationships and methods thereby placing the third party at a commercial disadvantage. The disclosure of the information is also reasonably likely to negatively impact on the functionality of the business relationships between the identified entities because those relationships are discretely managed. Disclosure of the relationships between the third parties would render them ineffective as their ability to source information relating to people smuggling would be significantly inhibited.

The third party business has identified the information contained in the progress report concerning its relationship with partners, contacts and other agencies as being sensitive to its activities and has submitted that it not be disclosed.

For an adverse effect to ground a conditional exemption under s 47G, it must be 'unreasonable'. As the Guidelines point out:

[6.165] The presence of 'unreasonably' in s 47G(1) implies a need to balance public and private interests, but this does not amount to the public interest test of s 11A(5) which follows later in the decision process.

[6.166] The test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. For example, the disclosure of information that a business's activities pose a threat to public.

In deciding whether the expected adverse effect would be unreasonable, I have had regard to the benefit to the public in having access to documents that provide some assurance that proper processes were followed in the decision to engage these contractors. I have also considered the more general public benefit in transparency around the function being performed by the contractors. I have weighed that against the undesirability of placing the contractors at a commercial disadvantage. I have also taken into account the objections of those businesses who responded to third party consultation notices sent to them. In light of that I have also considered the desirability of promoting an effective and trusting relationship between the Department and current and future contractors for this particular work, which is difficult and unpopular work but strategically important in the context of preventing people smuggling ventures.

Taking all this into account I have identified some material which in my view would have an unreasonable adverse effect on the business interests of commercial parties if disclosed. That information is material which, in my view, has insufficient value in terms of elucidating the public interests in accountability to outweigh the private as well as public interests in exemption. I have conditionally exempted it accordingly.

## **6 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 those documents would be contrary to the public interest (section 11A of the FOI Act). A conditionally exempt document must still be disclosed unless disclosure at that time would, on balance, be contrary to the public interest (see s 11A(5) FOI Act).

In discussing the public interest test the Guidelines say:

[6.7] The concept of public interest has also been described as something that is of serious concern or benefit to the public, not merely of individual interest.[3] It has been held that public interest does not mean of interest to the public, but in the interest of the public.

...

[6.9] To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, whereon [*sic*] balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

I have had regard to the objects of the FOI Act and the other factors listed in section 11B(3) of the FOI Act, being whether access to the documents 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.

I have not taken into account any of the 'irrelevant factors' in s 11B(4).

In my view the relevant public interest factors in favour of disclosure are:

- the public interest in accountability and transparency concerning the treatment of persons who may be seeking asylum in Australia
- the public interest in informing debate around the most effective way of dealing with the problem of people smuggling on one hand, and the problem of dealing appropriately with displaced persons on the other
- the public interest in effective oversight of expenditure of government resources on initiatives directed to achieving Operation Sovereign Borders initiatives.

In my view the relevant public interest factors against disclosure are:

- the public interest in effectively halting, or at least reducing, engagement in people smuggling, both from a law and order point of view but more importantly from a humanitarian and safety of life at sea point of view
- the public interest in maintaining the integrity of Australia's maritime borders, which ultimately is an issue of national security
- the public interest in ensuring the Department and its contractors are able to discharge their functions as effectively and efficiently as possible, noting the finite resources available and the desirability of government operating as efficiently as it can
- in relation to personal information conditionally exempted under s 47F, the additional public interest in respecting the privacy of individuals, as well as their right to live and work free from harassment and, in the case of asylum seekers, fear of persecution
- in relation to business information conditionally exempted under s 47G, the public interest in maintaining a fair and level playing field for organisations competing in a commercial marketplace, as well as the interest in maintaining a relationship of cooperation and trust between service providers and the Department in this difficult area.

In my view material that would contribute to an understanding of how this work has been undertaken at a policy level has already been disclosed. I have identified some additional information in this decision which in my view can be released with negligible risk to the public interest factors I have identified against disclosure. I have released that material.

What remains is information at the day-to-day operational level or information going into intimate details of the operations of the Department or the contractors. In respect of that information, while I am satisfied that it would make some contribution to public debate and understanding, the extent of that contribution is less than its capacity to prejudice

the effectiveness of the operations in question. Given the importance of the education and market research work being undertaken to issues like national security and safety of individuals, I have given substantial weight to the public interests in preserving the effectiveness of the Department's activities. These are serious matters, with the potential for serious consequences for individuals and the Commonwealth of Australia if the Department (in conjunction with its contracted service providers) is not effective in delivering these activities.

In respect of the information exempted under s 47F, I do not believe it adds anything to the public's understanding. I see no public interest benefit in its release, other than reflecting, in a very marginal way, the general public interest in access to information.

In the result, I am satisfied that the interests identified against disclosure outweigh those favouring disclosure in relation to the information that remains. In other words, I find that on balance disclosure would be contrary to the public interest. My decision is that the material is exempt from disclosure on that basis.

### **Legislation**

I have attached an extract of the exemption provisions of the FOI Act and the public interest test for your information at **Attachment B**.

### **Your Review Rights**

The FOI Act grants you rights to have my decision reviewed. This matter is already before the Information Commissioner. The effect of s55G FOI Act is to substitute this decision as the decision under review. If you wish to seek review of it you simply need to indicate to the Information Commissioner's office that you wish the IC review to continue.

If you wish to continue, I would suggest you consider not seeking further access to the material over which s 47F exemption is claimed. You may be satisfied that it is unnecessary for you to access that information for the purposes of your request.

### **Making a Complaint**

You may complain to the Commonwealth Ombudsman if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is available on line at <http://www.ombudsman.gov.au/pages/making-a-complaint/>.

### **Contact**

Should you wish to discuss my decision, please do not hesitate to contact Ms [REDACTED], Senior Lawyer via email at [foi@border.gov.au](mailto:foi@border.gov.au).

[REDACTED]  
[REDACTED]  
**Acting Assistant Secretary**  
**Communications and Media Branch**  
**Australian Border Force | Department of Immigration and Border Protection**

**ATTACHMENT A**

**Schedule of Documents**

	Date	No. of pages	Description	First Decision		Substitute decision	
				Release in Part	Additional information released?	Revised exemption claims?	Additional information released?
1.	20/01/2013	2	Email Subject: Somali-Sudanese Reporting	Release in Part	s22(1)(a)(ii) s47E(d) s47G(1)(a)	Yes	S47E(d) S47F
2.	21/11/2013	3	Email Subject: Rohingya Cohort Reporting Indonesia	Release in Part	s22(1)(a)(ii) s47E(d) s47G(1)(a)	Yes	S47E(d) S47F
3.	July 2012	18	IOM CLO Reports July 2012	Release in Part	s47E(d) s47G(1)(a) s47F	Yes	S47E(d)
4.	30/06/2013	4	IOM Progress Report to ACBPS –PIC- Crew Progress Report 30June2013	Release in Part	s22(1)(a)(ii) s47F s47G(1)(a)	Yes	S47F S47G(1)(a)
5.	Undated	1	PIC T-shirts	Release in Full			
6.	Undated	1	PIC Standing Banners	Release in Full			
7.	Undated	1	PIC Posters	Release in Full			
8.	Oct 2012	7	Consolidated IOM CLO Reports Oct 1-12 2012 (2)	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
9.	June 2012	5	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)

	Date	No. of pages	Description	First Decision		Substitute decision	
				Release in Part	s47E(d) s47G(1)(a)	Additional information released?	Revised exemption claims?
10.	Sept 2012	4	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
11.	March 2013	18	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
12.	Dec 2012	11	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
13.	Jan 2013	10	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
14.	Aug 2012	13	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
15.	Oct 2012	7	IOM CLO report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
16.	Nov 2012	3	IOM CLO report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
17.	Mar 2013	3	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d) S47F
18.	Jun 2013	21	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
19.	Mar 2013	8	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d) S47F

	Date	No. of pages	Description	First Decision		Substitute decision	
				Release in Part	s47E(d) s47G(1)(a)	Additional information released?	Revised exemption claims?
20.	Feb 2013	5	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
21.	Jul 2012	5	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
22.	Jan 2013	4	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
23.	Oct 2012	5	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
24.	Oct 2012	4	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
25.	May 2013	8	IOM CLO Reports	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
26.	30/07/2013	2	IOM CLO Report	Release in Part	s47E(d) s47G(1)(a)	No	S47E(d)
27.	18/11/2013	2	Rohingya Cohort Reporting - 18 November 2013	Release in Part	s22(1)(a)(ii) s47E(d) s47G(1)(a)	Yes	S47E(d) S47F
28.	Feb 2014	5	IOM Report - Rohingya in Indonesia	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
29.	31/12/2013	5	IOM CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)

	Date	No. of pages	Description	First Decision		Substitute decision	
				Release in Part	s47E(d) s47G(1)(a)	Additional information released?	Revised exemption claims?
30.	27/09/2013	4	IOM CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
31.	20/09/2013	4	IOM CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
32.	14/01/2014	1	IOM CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
33.	6/12/2013	8	IOM CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
34.	Undated	2	Community Liaison Officer (CLO) Reporting	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
35.	Oct 2013	9	IOM Bi-Weekly CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
36.	20/12/2013	16	IOM Biweekly CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
37.	22/11/2013	4	IOM Biweekly CLO Report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
38.	8/11/2013	3	IOM Biweekly CLO report	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
39.	31/7/2013	2	IOM CLO Reporting	Release in Part	s47E(d) s47G(1)(a)	Yes	S47E(d)
40.	17/10/2013	2	Yahoo!_Summary Report	Release in Full			
41.	24/10/2013	2	Yahoo!_Summary Report	Release in Full			

	Date	No. of pages	Description	First Decision		Substitute decision	
						Additional information released?	Revised exemption claims?
42.	31/10/2013	1	Yahoo!_Summary Report	Release in Full			
43.	7-11 Oct 2013	13	ACBPS Weekly Report	Release in Part	s47E(d)	No	No
44.	12-16 Oct 2013	15	ACBPS Weekly Report	Release in Part	s47E(d)	No	No
45.	21 - 25 Oct 13	27	ACBPS Weekly Report	Release in Part	s47E(d)	No	No
46.	undated	15	Leo Burnett Report 2	Exempt in full	s47E(d)	No	No
47.	Undated	16	Leo Burnett Report 1	Exempt in full	s47E(d)	No	No
48.	Undated	10	ACBPS Digital Placement Report	Release in Full			
49.	15/08/2013	8	People Smuggling Off-shore public information campaign - Malaysia	Release in Part	s22(1)(a)(ii) s33(a)(iii) s47E(d) s47F s47G(1)(a)	APPLICANT REMOVED FROM SCOPE	
50.	2 Jan 2014	5	Letter and Questionnaire from Regional Support Office - Bali Process	Exempt in full	s22(1)(a)(ii) s33(a)(iii)	APPLICANT REMOVED FROM SCOPE	
51.	2012	221	Integrated Report on People Smuggling to Australia No. 1310175 Qualitative and Quantitative Report Consult IP50S	Release in Part	s47E(d) s47F	No	No
52.	2012	169	Project Sailormoon – Quantitative Final Report	Release in Part	s47E(d) s47F	No	No

	Date	No. of pages	Description	First Decision		Substitute decision	
				Release in Part	Additional information released?	Revised exemption claims?	
53.	20/03/2013	10	Counter Maritime People Smuggling Taskforce – Research Agency Proposals Evaluation Report	Release in Part	s22(1)(a)(ii) s47F s47G(1)(a)	Yes	No
54.		3	Market Research proposals - Comparative table	Release in Part	s22(1)(a)(ii) s47G(1)(a) s47F	No	s22(1)(a)(ii) s47G(1)(a)
55.	25/02/2013	8	Counter People Smuggling Taskforce - Indonesia Evaluation and Market Research Brief	Release in Part	s22(1)(a)(ii) s47E(d) s47F	Yes	No
56.	13/08/2013	5	Counter People Smuggling Taskforce – Indonesia - Creative Advertising Brief Indonesia	Release in Part	s47F s47G(1)(a)	No	S47F
57.	Undated	2	Brief for Prime Minister's Office – Press Team – ACBPS Communication Activity on the Papua New Guinea Resettlement Agreement	Release in Part	s22(1)(a)(ii) s47G(1)(a)	Yes	s22(1)(a)(ii) s34(3) s47E(d)
58.	20/06/2011	4	Ministerial Brief - Update on offshore strategic communication activity to deter people smuggling	Release in Part	s22(1)(a)(ii) s47F	Yes	s22(1)(a)(ii) s47E(d) s47F
59.	13/06/2013	2	Briefing Point: Meeting	Release in Part	s22(1)(a)(ii)	Yes	s22(1)(a)(ii) s47E(d) s47F
60.	17/10/2013	3	Brief to Chief of Staff, Joint Agency Task Force regarding IOM contracted activities in Indonesia	Release in Part	s22(1)(a)(ii) s47E(d) s47G(1)(a)	Yes	S47E(d) S47F



	Date	No. of pages	Description	First Decision		Substitute decision	
				Release in Part	Additional information released?	Revised exemption claims?	Additional information released?
61.	12/06/2013	3	International Coordination Brief - Meeting	Release in Part	s22(1)(a)(ii) s47E(d) s47F	Yes	s22(1)(a)(ii) s47E(d) s47F
62.	22/07/2013	4	Internal Brief - Improvised communications approach	Release in Part	s22(1)(a)(ii) s47E(d) s47F	Yes	s22(1)(a)(ii) s34(3) s47E(d) s47F
63.	Undated	3	International Brief – Indonesian-Australian 13th Customs to Customs Bilateral Discussions – Counter People Smuggling Communication Activities	Release in Part	s22(1)(a)(ii) s47E(d) s47F s47G(1)(a)	Yes	s22(1)(a)(ii) s47E(d) s47F
64.	July 2013	8	Internal Brief - Counter People Smuggling Task Force- Strategic Overview of Offshore Communication Campaign	Release in Part	s22(1)(a)(ii) s47E(d) s47G(1)(a)	Yes	s22(1)(a)(ii) s47E(d) s47F
65.	May 2013	4	Internal Brief – Counter People Smuggling Task Force – Offshore Communication Campaign	Release in Part	s22(1)(a)(ii) s47F	Yes	No
66.	03/06/2013	10	Offshore Communication strategy to deter Potential Irregular Immigrants (PIIs) from travelling by boat to Australia 2013-14	Release in Part	s22(1)(a)(ii) s47F	Yes	s22(1)(a)(ii) s47E(d) s47F
67.	Undated	2	Internal Brief – Counter People Smuggling Task Force – Offshore Communication Campaign	Release in Part	s22(1)(a)(ii)	No	No

	Date	No. of pages	Description	First Decision	Substitute decision	
					Additional information released?	Revised exemption claims?
68.	20/08/2013	3	Internal Brief - Counter People Smuggling Task Force – Offshore Communication Status - Indonesia and Malaysia	Release in Part s22(1)(a)(ii) s47E(d) s47F s47G(1)(a)	Yes	No
69.	25 Mar 2014	15	IOM Report – Rohingya, Sudanese & Somali Cohorts	Release in Part s47E(d) s47F s47G(1)(a)	No	S47E(d) S47F
70.	01 Oct - 21 Nov 2013	51	Leo Burnett Final Report	Release in part s47E(d) s47G(1)(a)	Yes	No

## 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 34 – Cabinet Documents

- (1) A document is an exempt document if:
- (a) both of the following are satisfied:
    - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
    - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
  - (b) it is an official record of the Cabinet; or
  - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
  - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

#### Exceptions

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) A document by which a decision of the Cabinet is officially published is not an exempt document.

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

(a) the disclosure of the information would reveal a Cabinet deliberation or decision; and

(b) the existence of the deliberation or decision has not been officially disclosed.

#### **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:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

(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.

...

#### **Section 47G - Public interest conditional exemptions—business**

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

#### **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.