



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/07/01877
File Number ADF2015/40299

Scope of request

I would like access to Departmental reports, Ministerial Briefs and minutes of meetings dated from 1 January 2013 relating to possible changes to the residential status of New Zealand Citizens in Australia but excluding emails and draft documents yet to be finalized.

Authority to make decision

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

Information considered

In reaching my decision, I have considered the following:

- The terms of your request
- The *Freedom of Information Act 1982*
- The Australian Information Commissioner's (AIC) guidelines relating to access to documents held by government
- Departmental documents (identified in the Schedule)
- Consultation with relevant areas within the Department
- Consultation with relevant Commonwealth agencies

Reasons for decision

I am satisfied that I have been provided with all the documents that are relevant to your request. The schedule of the three documents that fall within the scope of your request at **Attachment B** sets out the decision on access 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.

Section 22 of the FOI Act - Deletion of exempt or irrelevant material

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.

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 reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

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.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

Section 47C of the FOI Act – Deliberative Material

A document is conditionally exempt under s.47C(1) of the FOI Act if its release would disclose deliberative matter including opinion, advice or recommendation that has been obtained, prepared or recorded, or the consultation / deliberation during a deliberative process. I note that a conditionally exempt document **must** be released under the FOI Act unless the release would be contrary to the public interest.

Two of the documents requested are records of internal and external discussions that are of a deliberative nature. The third document is an internal brief which is provided to inform and provide advice to a Minister. I am satisfied that all three of these documents contain information that is of a deliberative nature.

I note the AIC guidelines have included advice on what information would not be considered deliberative matter and I have taken these into consideration. Information identified as purely factual; a decision taken; and information in the public domain has been released to you. All other information has been assessed against the public interest test.

I am satisfied that the specific information identified in the documents and the schedule is conditionally exempt under s.47C(1) of the FOI Act.

Section 11B of the FOI Act – Public interest exemptions – factors

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. 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);*

Providing access to document subject to your request may promote the objects of the FOI Act. On balance I find that this would weigh in favour of release.

- (b) *inform debate on a matter of public importance;*

The matters discussed within the documents may inform debate on a matter that was of general public importance. On balance I find that this would weigh in favour of release.

- (c) *promote effective oversight of public expenditure;*

Having regard to the nature of the documents and the deliberative discussion I find that there is no specific information contained within the documents that would provide effective oversight of public expenditure. On balance I find that this does not weigh in favour of release.

- (d) *allow a person to access his or her own personal information.*

The documents subject to your request do not contain your personal information. On balance I find that this would weigh in favour of release.

Further, the AIC has issued guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act. However, this is not an exhaustive list of factors that can be taken into consideration.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- where information is closely connected to Cabinet material the release would prejudice the confidentiality of the Cabinet process;
- release of the information identified as conditionally exempt would prejudice the deliberative process and the full canvassing of issues impacting the immigration portfolio; and
- premature release of this information would prejudice the policy development.


These documents were created to support a deliberative process and the full canvassing of issues in relation to an area that impacts the immigration portfolio and other commonwealth agencies. These matters are closely connected to Cabinet Material and the premature release of the information would prejudice the policy development in this area. On balance I have given these factors the greatest weight and find that the specific material is conditionally exempt.

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
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18 February 2016