



ATTACHMENT A
DECISION RECORD

Request Details

FOI Request: FA 15/12/01537

File Number: ADF2015/69404

Scope of Request

You have requested access to the following documents:

'documents regarding the incident of 16 July, 2013 where a boat capsized and was subject to Search and Rescue (SAR) 2013/4816 (also known as SIEV 794 and COI 1512).

A Review conducted by the Australian Customs and Border Protection Service received 600 documents when writing up the report. It also refers to a few telephone calls made by somebody from the asylum seeker boat (SIEV 794) and also from a person who made a call from Melbourne and it said the telephone calls were recorded.

I would like access to:

- 1. all 600 documents or some of it;*
- 2. the records of the telephone calls made by asylum seeker on the boat and a man from Melbourne (this is in the report);*
- 3. any video or footages by Albany and Warramunga before the incident when the boat capsized and after, and*
- 4. any footage before or after the incident by the supporting RAAF MPA (referred in the report).'*

On 13 January 2016, the Department advised you that it intended to refuse access to the documents requested, as the work involved in processing the request would substantially and unreasonably divert the resources of this agency from its other operations due to its broad nature, size and complexity.

On 27 January 2016, you agreed to reduce the scope of your request to the following documents:

"only the records of the telephone calls made by asylum seeker from the boat, assigned as COI 1512. And the records of three telephone call made by a from Melbourne made three in relation to the SIEV 794 (either the sound records or transcribed version of it)".

On 5 February 2016, you indicated that you would like to modify the scope of your request again to the following documents:

"the records of all the telephone calls made by asylum seeker from the boat and the records of the call[s] made from Melbourne in relation to SIEV 794. The man from Melbourne called the Australian Customs and Rescue and Coordination centre several times before the incident and after the incident (the calls were made from around 8 am to 10 pm, altogether 7 calls, on July 16, 2013). I would like also the records of external calls as well as the staff from Australian Custom or RCC responded to the call in relation to 794."

In order to process your request, the Department has interpreted the scope of your request to be for the following documents:

Any records, being either sound recordings or transcribed versions, of the following telephone calls made in relation to Search and Rescue (SAR) 2013/4816 (also known as SIEV 794 and COI 1512):

- the telephone calls made by asylum seekers from the vessel subsequently known as SIEV 794; and*
- any records of any telephone calls made from Melbourne to either the Australian Customs and Border Protection Service or the Rescue Coordination Centre between 8am to 10pm on 16 July 2013 in relation to the vessel subsequently known as SIEV 794; and*
- any records of external calls made by staff from Australian Custom and Border Protection Service or the Rescue Coordination Centre responding to those telephone calls.*

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

The Department has identified five emails which could be regarded as being a "record" of telephone calls made to either the Rescue and Coordination Centre or the Australian Customs and Border Protection Service in the circumstances described in the scope of your request. These documents were in the possession of the Department on 10 December 2015 when your request was received.

The schedule of the 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.

1 Section 24A –documents cannot be found, do not exist or have not been received

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find a document and the Department is satisfied that the document is in the Department's possession but cannot be found or does not exist.

By way of background, the Review report published on the Department's website, and referenced by you as part of your original request, makes reference to telephone calls received by:

1. RCC and
2. Customs and Border Protection officers on Christmas Island.

I note that RCC is the Australian Maritime Safety Authority (AMSA) Rescue Coordination Centre (RCC). It did not form part of the functions of the former Australian Customs and Border Protection Service (ACBPS) and does not form part of the functions of the Department.

The telephone calls referenced in the Review received by the AMSA RCC were not received by ACBPS. As indicated in the report, the Review was conducted into the actions of ACBPS, including Border Protection Command (BPC). It did not relate to the actions of AMSA and no copies of any recordings of the phone calls received by RCC were provided to ACBPS as part of that Review. As such no recordings of telephone calls received by the AMSA RCC are in the possession of the Department.

In relation to the phone calls referenced in the Review report as being received by Customs and Border Protection officers on Christmas Island, no facilities were available on Christmas Island to capture recordings of voice phone calls, and therefore, no such recordings exist.

In the circumstances, in relation to actual recordings of the phone calls you have referred to in your request, no documents were in the possession of the Department on 10 December 2015 when your FOI request was received and the Department has no records to produce in that regard.

My decision is based on the application of section 24A of the FOI Act.

2 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 23 December 2016, 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.

In addition to that, parts of the documents refer to matters outside the scope of your request as they do not relate to the telephone calls referred to in the Review report.

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

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.

3 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' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the Privacy Act 1988).

I consider that disclosure of parts of the documents would disclose personal information relating to third parties. Information within these documents consists of private third parties' details, including names, nationalities and mobile contact details. This information would identify those individuals.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I 'must' have regard to four factors set out in s.47F(2) of the FOI Act. I have considered each of these factors below:

- (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 available resources;*
- (d) *any other matters that I consider relevant.*

The third parties' information is not well known and would only be known to a limited group of people with a business need to know. As the third parties' information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. Their information is not available from public sources.

I am satisfied that the disclosure of the information within these documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have therefore decided that the information referred to above is conditionally exempt under section 47F 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 5 below.

4 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 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 documents:

- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. 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**

30 March 2016

ATTACHMENT A

Schedule of Documents

FOI request: FA 15/12/01537

File Number: ADF2015/69404

No	Date of document	No. of pages	Description	Decision on release	
1.	16/7/2013 0817	1	Email from CNOC to Border Protection Operations	Release in part	22(1)(a)(ii) 47F
2.	16/07/2013 1012	1	Email from CNOC to Border Protection Operations, RCC Australia	Release in part	22(1)(a)(ii) 47F
3.	16/07/2013 1044	1	Email from CNOC to Border Protection Operations, RCC Australia	Release in part	22(1)(a)(ii) 47F
4.	16/07/2013 1206	1	Email from RCC Australia to Border Protection Operations	Release in part	22(1)(a)(ii)
5.	16/07/2013 1531	1	Email from AMSOC to Border Protection Operations	Release in part	22(1)(a)(ii)

ATTACHMENT B

Relevant Legislation

Section 24A - Documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

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 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.

...

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.