



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request: FA 16/04/01146  
File Number: ADF2016/16821

#### Scope of request

1. On 8 April 2016 you requested:

*All reports and audits relating to fraud allegations surrounding IHMS's delivery of their health services contracts in immigration detention dating since July 2015.*

#### Documents in scope

2. Three documents were found to be within the scope of your request. These documents are detailed in the Schedule of Documents (Attachment B).
3. On 6 May 2016, following receipt of a notice under section 24AB of the FOI Act, you agreed to exclude from the scope of the request 918 pages of attachments to Document 1.

#### 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*;
  - The Departmental documents identified in the Schedule of Documents;
  - Consultations with relevant business areas; 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 reason(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.

### Exemptions applied to the document under s.22(1)(a)(i)

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

### Section 47C – Deliberative processes

10. A document is conditionally exempt under s.47C(1) of the FOI Act if it includes deliberative matter. Deliberative matter is:

*...content that is in the nature of, or relating to either:*

- *an opinion, advice or recommendation that has been obtained, prepared or recorded*
- *a consultation or deliberation that has taken place*
- *in the course of, or for the purposes of, a deliberative process of the agency or Minister.*

*(Paragraph 6.56, Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982)*

11. I am satisfied that the documents contain deliberative matter. The relevant material in the documents comprises detailed discussion by Departmental staff (Documents 1 and 3) and contracted staff (Document 2) of evidence pertaining to the allegations made against IHMS. The material includes the results of consultations, recorded opinions and recommendations.

### Application of the 'public interest' test

12. While I have found that the conditional exemption in s.47C(1) of the FOI Act applies to the information outlined in paragraph 11 above, s.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.
13. In determining whether disclosure would be contrary to the public interest, s.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.
14. I acknowledge that release of the information subject to conditional exemption under s.47C(1) would promote the objects of facilitating and promoting public access to information.
  15. While the potential misconduct of companies contracted by the Federal Government is a matter of public importance, the allegations made against IHMS have not featured in public debate during 2016. I have therefore have given this factor moderate weight.
  16. Release of the information would promote effective oversight of public expenditure – I have given this factor moderate weight.
  17. Release of the information would not allow a person to access his or her own personal information.
  18. In contrast to the factors favouring release, I note that the material contains discussion regarding a sensitive matter (alleged misconduct by IHMS), including assessment, opinions and recommendations arising from the review of commercially sensitive information.
  19. In this instance release of the information would reveal commercially sensitive information including the content of Departmental discussion about a service provider's (IHMS's) performance. The release of this information could reasonably be expected to adversely impact the working relationship between the Department and the contracted service provider (IHMS) and jeopardise the ability of the Department to obtain detailed information from any service provider when reviewing allegations of inappropriate conduct.
  20. On balance, I have decided that the public interest lies in not disclosing the material assessed as deliberative matter in this instance. The documents are therefore exempted in part under s.47C(1) of the FOI Act.

### **Section 47F – personal privacy**

21. 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'*

22. I am satisfied that Document 2 to which you have sought access contain 'personal information', being identifying information of the contracted staff from an external business which authored the Document.

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

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

24. 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.

25. The personal information in the documents is not well known or available in publicly accessible sources. As such, I consider that disclosure of the personal information in the document would be unreasonable. The personal information is therefore conditionally exempt from release, subject to a public interest test.

*Application of the public interest test*

26. While I acknowledge that release of the personal information in the document would promote the objects of facilitating and promoting public access to information, I consider that the release of individual identifying and personal information would make a negligible further contribution to public debate.

27. In contrast, I consider that the protection of the individuals' right to privacy should be given the upmost importance.

28. Taking into account the above matters, on balance, I consider that disclosure of the personal information in Document 2 is contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47F of the FOI Act. The exemption has therefore been applied to the document released.

***Section 47G(1)(a) – business information which would or could adversely impact a person's business affairs***

29. The exempted information comprises discussion of evidence related to the allegations made against IHMS. The discussion includes consideration of commercially sensitive material and assessments and opinions about IHMS performance.

30. If released, this information could negatively impact IHMS's commercial activities by revealing commercially sensitive material (including detail of IHMS processes and procedures) as well as Departmental/contractor assessment/opinions of IHMS performance. Such detailed performance assessment is commercially sensitive.

31. I am therefore satisfied that the information specifically identified in the relevant documents is conditionally exempt under s.47(G)(1)(a) of the FOI Act.

*Application of the public interest test*

32. I acknowledge that release of the material conditionally exempted under s.47(G)(1)(a) would promote the objects of the FOI Act by facilitating and promoting public access to information held by the Department.

33. Release of the information would also inform debate on a matter of some public importance, although I consider that this factor is lessened given the amount of information that has been released relating to the most serious allegations (those relating to fraud).

34. Given that the overall findings relating to allegations of fraud made against IHMS have been released, I do not consider that release of the information conditionally exempted under s.47(G)(1)(a) would promote effective oversight of public expenditure.
35. Release of the information would not allow a person to access his or her own personal information.
36. In contrast to the factors favouring release, I consider that the protection of a business's commercially sensitive information, and assessments about that business's performance, are a priority. It is in the public interest that businesses providing services to Government have a degree of protection over commercially sensitive information.
37. In summary, I consider that release of the information exempted under s.47(G)(1)(a) in the relevant documents would be contrary to the public interest. As such, I have exempted the information from release.

**Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act**

38. I find that the documents relevant to your request contain some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the documents released.
39. The material deleted under s.22(1)(a)(ii) comprises:
  - the names of Departmental non-Senior Executive Service staff (although position titles have been released). The intended deletion of this information was advised to you on 20 April 2016 and you did not raise any objections.



Authorised decision maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

17 June 2016



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request: FA 16/04/01146  
File Number: ADF2016/16821

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	22/08/2015	1-20	Departmental Document <i>Review of allegations made against International Health and Medical Services in the Guardian Australia, July 2015</i>	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47C(1) s.47G(1)(a)
2.	31/08/2015	21-61	Departmental Document <i>Management Initiated Review – IHMS Contract</i>	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47C(1) s.47F(1) s.47G(1)(a)
3.	04/09/2015	62-70	Departmental Document <i>Detention Assurance Review – IHMS Allegations</i>	Exempted in part	s.47C(1) s.47G(1)(a)



## **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).

## 11B Public interest exemptions—factors

### *Scope*

- (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.



## 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.

## 47C Public interest conditional exemptions- deliberative processes

### General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter ( **deliberative matter** ) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
  - (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or

- (d) the Government of Norfolk Island.

#### Exceptions

- (2) Deliberative matter does not include either of the following:
  - (a) operational information (see section 8A);
  - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
  - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

#### **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).

#### **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.

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