



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/10/00067
File Number ADF2015/51088

Scope of request

1. On 25 September 2015 you requested:

Incident Reports, Internal emails and/or other documents that reveal allegations of sexual behaviour from Wickham Point staff to detainees and from detainees to staff at Wickham Point Detention centre from 18.6.2014 to present.

Documents in scope

2. A series of incident reports and internal emails relating to four incidents that occurred at Wickham Point between November 2014 and June 2015.

Authority to make decision

3. I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (FOI Act) to make decisions in respect of requests to gain access to documents or to amend or annotate departmental records.

Information considered

4. In reaching my decision, I have considered the following:
 - The FOI Act;
 - Departmental files and/or documents (identified above); and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

5. 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.
6. 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 reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).
7. 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.

Deletion of exempt material under s.22(1)(a)(i) of the FOI Act

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

Section 47F(1) – Personal Privacy

9. 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’

10. I am satisfied that the documents to which you have sought access contain ‘personal information’, being the names and identifying information of detainees and Serco staff members. The documents also contain information which, while not itself personal identifying information, could be used to identify these individuals. The documents also contain first-hand accounts of incidents that, if released, would reasonably be expected to cause the alleged victim personal embarrassment and difficulty.

Disclosure would involve the ‘unreasonable disclosure of personal information’

11. In assessing whether a particular disclosure would be ‘unreasonable’, section 47F(2) sets out a number of factors which the Department *must* consider.
12. 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.
13. The personal information in the document is not freely or broadly available in the public domain and not well known. As such, I consider that disclosure of the personal information in the document would be unreasonable.

Application of the ‘public interest’ test

14. Although I have found that the information contained in the document you requested is conditionally exempt from release under s.47F(1), 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.
15. I acknowledge that release of the document without the exemptions made under s.47F(1) would promote the objects of the FOI Act, through facilitating and promoting public access to information. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
16. In contrast, I consider that it is in the broader public interest for individuals to be able to entrust the Department with their personal details, particularly where they are alleged victims of the incidents described in the documents.

17. Taking into account the above matters, on balance, I consider that disclosure of the information in the document exempted under s.47F(1) to be contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47F(1) of the FOI Act. The exemption has therefore been applied to the document released.

Section 47C(1) – Deliberative Processes

18. 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.
19. I am satisfied that 'Document 2' contains deliberative matter. The relevant material in the documents comprises opinions of departmental officers on options for the most appropriate methods to investigate the allegations.

Application of the 'public interest' test

20. I acknowledge that release of the document without the exemptions made under s.47C(1) would promote the objects of the FOI Act, through facilitating and promoting public access to information. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
21. In contrast, I consider that the ability of departmental officers to provide opinions regarding the appropriate way to investigate incidents to be essential for its effective and efficient management of these operations, especially noting the sensitive nature of the work.
22. Taking into account the above matters, on balance, I consider that disclosure of the information in the document exempted under s.47C(1) to be contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47C(1) of the FOI Act. The exemption has therefore been applied to the document released.

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

23. I find that some of the document relevant to your request contains material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the Schedule of Documents and the document released.
24. The material deleted under s.22(1)(a)(ii) comprises names and contact details of non-SES employees of the Department, and emails relevant to the management of your FOI request.



Authorised FOI decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

27 June 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/10/00067
File Number ADF2015/51088

No.	Date of document	Pages	Description	Decision on release	
1.	November 2014	1-5	Documents relating to incident 1	Irrelevant to request Exempt in part	22(1)(a)(ii) 47F(1)
2.	April 2015– October 2015	6-52	Documents relating to incident 2	Irrelevant to request Exempt in part	22(1)(a)(ii) 47C(1) 47F(1)
3.	May 2015– September 2015	53-64	Documents relating to incident 3	Exempted in part	47F(1)
4.	June 2015– July 2015	65-71	Documents relating to incident 4	Exempted in part	47F(1)



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.