



Attachment A

DECISION RECORD

Request Details

FOI Request: FA 15/08/00732
File Number: ADF2015/42996

Scope of request

1. On 13 August 2015 you requested:

documents held by the Department of Immigration and Border Protection (the Department) regarding communication with/plans to communicate with other countries about the effects of stripping the Australian citizenship of dual nationals who engage in terrorism.

In making this application I rely upon the definitions found in the first reading draft and explanatory memorandum of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015.

Specifically, I seek access to:

1. *correspondence, notes of meetings, file notes, documents created as a result of oral briefings, and/or similar communications; and/or,*
2. *documents created as part of briefings and/or submissions to Australian politicians.*

Documents in scope

2. The documents in scope of the request are detailed at Attachment B – Schedule of Documents

Authority to make decision

3. 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

4. In reaching my decision, I have considered the following:
 - the *Freedom of Information Act 1982*;
 - Departmental documents (identified at Attachment B);
 - the Australian Information Commissioner's guidelines relating to access to documents held by government; and
 - comments provided by the Department of Foreign Affairs and Trade (DFAT) in relation to documents 1,2 and 3.

Reasons for decision

5. I have considered the files within the scope of your request and applied exemptions in part or in full to the documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of irrelevant or exempt material under s.22 of the Act

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. Irrelevant material is deleted pursuant to s.22(1)(a)(ii) and exempt material is deleted pursuant to s.22(1)(a)(i) of the FOI Act.

Deletion of irrelevant material

9. The documents contain information which I have determined to be irrelevant to your request. Irrelevant information includes the names and direct contact details of Departmental staff below senior executive level as well as information which does not fall within the scope of your request.
10. The documents in scope contain a large amount of information which is not considered in scope. Pages which are fully irrelevant to the request have been removed and will not be released to you. Please read the Schedule of Documents for details on the number of pages not released. Where information is only removed because it is not considered within scope, the document is considered to have been released in full. This is also noted in the Schedule.

Deletion of exempt material

Documents affecting national security – s.33(a)(i)

11. Section 33(a)(i) of the FOI Act provides that a document is an exempt document if disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.
12. 'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as:
 - (5) *Without limiting the generality of the expression **security of the Commonwealth**, that expression shall be taken to extend to:*
 - (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth ...*

13. Further, the FOI Guidelines issues by the Australian Information Commissioner note that the 'security of the Commonwealth' broadly refers to 'the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests'.
14. Finally, the Commonwealth Government has publicly stated that the Commonwealth's interests are in ensuring a safe border for the Australian community. The parts of the documents exempt under this section touch directly on that matter.
15. I am satisfied that release of parts of documents 3, 9 and 10 could reasonably be expected to impact adversely on the security of the Commonwealth. Consequently, I am satisfied that these parts of the documents are exempt from disclosure under s.33(a)(i) of the FOI Act.

Exemption - Documents affecting international relations – s.33(a)(iii)

16. I have decided that parts of documents are exempt under s.33(1)(a)(iii) of the FOI Act, as they are documents concerning international relations between Australia and a number of foreign governments, the disclosure of which could reasonably be expected to cause damage to Australia's relations with these foreign governments.
17. In my opinion the expectation of damage that would be caused is a reasonable one, having paid regard to the nature of the information and the context of the documents in which the information is contained, and the nature and significance of Australia's relations with its regional partners.
18. I am of the view that releasing the material I have exempted under this part, as contained in documents 1,2,3,7,9,10,12,13,14 and 15, would contribute to a lessening of confidence these foreign governments place in the Australian government and could affect the maintenance of good working relations with those governments.

Conditionally exempt documents

19. The documents I have considered also fall under a range of 'conditional' exemptions in the FOI Act. Therefore, I will explain what a 'conditionally exempt' document is before discussing the individual conditional exemptions I have applied.
20. The FOI Act provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

The public interest test

Factors weighing in favour of release

21. In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker must consider whether disclosure of the information would:
 - (a) *promote the objects of the Act; or*
 - (b) *inform debate on a matter of public importance; or*
 - (c) *promote effective oversight of public expenditure; or*
 - (d) *allow a person to access his or her personal information.*

22. The objects of the FOI Act, set out in s.3(1), are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities.

Factors weighing against release

23. The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the FOI Act).
24. The Information Commissioner has issued Guidelines that contain a non-exhaustive list of factors that a decision maker must consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the Guidelines refers. A copy of the Guidelines can be found at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>)
25. I will now consider each conditional exemption that I have applied in my decision.

Conditional exemption - deliberative processes - s.47C

26. I have exempted document 9 and part of document 3 under s.47C as the information contained in these documents is 'deliberative matter'. The documents contain advice and recommendations prepared for the 'deliberative processes' of this Department.
27. The 'deliberative processes' of the Department are the thinking, reflecting, deliberating, consultation and recommendation that occur prior to a decision being made. They are in effect the Department's thinking processes, which involve weighing up or evaluating considerations that may have a bearing on a course of action to be taken or a decision to be made. The documents relate to or reflect an opinion, advice, recommendation, consultation or deliberation which is part of, or for the purposes of, the Department's 'deliberative process' in carrying out its functions.
28. It is my view that the information contained in the documents is not operational information or purely factual material, but deals with the rationale for processes including proposed processes. As such, the material is deliberative matter regarding sensitive operational and policy matters.
29. Having formed this view I then considered whether release of the documents would be 'contrary to the public interest'.

Factors weighing in favour of release

30. I have considered the factors set out in subsection 11B(3) of the FOI Act which are discussed above.
31. While release of the material would promote the objects of the Act, I consider it would not promote the effective oversight of public expenditure or allow you to access your own personal information.
32. I consider that the material would inform debate on a matter of public importance and have given this some weight.

Factors weighing against release

33. As discussed above, the Information Commissioner Guidelines contain a list of 'non-exhaustive' factors that must be considered when determining if release of a document is against the public interest (s.11B(5) of the Act). The factors focus on the 'prejudice' caused by the release of the information. I note that the agency may also consider other relevant factors not listed in the Guidelines.
34. In this case I have considered the following:
- whether disclosure of the information could reasonably be expected to prejudice the deliberative processes of the Department;
 - whether disclosure of the information could reasonably be expected to prejudice the function of the Department to manage its portfolio; and
 - the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government.
35. On balance, I am satisfied that the release of the deliberative material in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the deliberative material in the documents is exempt from release under s.47C(1) of the FOI Act.

Conditional exemption - certain operations of agencies - s.47E(d)

36. Section 47E(d) of the FOI Act provides that a document is 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.
37. I consider that the disclosure of parts of documents 3, 9 and 10 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Australian Border Force. The information consists of sensitive operational information which if made public could impact the effectiveness of the operations or proposed operations.
38. Managing the security and integrity of Australia's borders is integral to the operations of the Australian Border Force. Any prejudice to the effectiveness of operational activities used in undertaking that role would result in a substantial adverse effect on the operations of the Australian Border Force and its partner agencies.

Factors weighing in favour of release

39. I am satisfied that release of the material would promote the objects of the Act and inform debate on a matter of public importance. However, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information. Therefore, two of the factors favouring release apply to the document.

Factors weighing against release

40. As set out above, the Australian Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act. One of these factors is whether disclosure of the document could reasonably be expected to 'prejudice security, law enforcement, public health or public safety' of the Australian community. I am satisfied that this factor weighs against release of this document. I have given this factor significant weight.

41. On balance, I am satisfied that the factor that weighs against release outweighs the two factors that weigh in favour of release. Therefore, I am satisfied that release of the exempted material in the documents would be contrary to the public interest and that the documents are exempted in part under s.47E(d) of the FOI Act.

Conditional exemption - personal information - s.47F(1)

42. A document is 'conditionally exempt' under s.47F(1) of the FOI Act if its release would involve the 'unreasonable disclosure of personal information about any person, including a deceased person'.
43. For information or documents to be exempt under this provision, the information in the documents must meet the definition of 'personal information' in s.4(1) of the FOI Act and I must be satisfied that the release of the information is 'unreasonable'.
44. The test of unreasonableness implies a need to balance the public interest in disclosure of government-held information and private interests of individuals.

Personal Information

45. I am satisfied that information contained in documents 1, 2, 3, 5, 6, 8, 10 and 11 is the 'personal information' of the individuals concerned, being the names of third party individuals who are not Departmental officers.

Unreasonable disclosure

46. Section 47F(2) of the FOI Act sets out the factors that may be considered when determining whether release is 'unreasonable'. They are: the extent to which the information is well known; whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document; the availability of the information from publically accessible sources and any other matters that the Department considers relevant.
47. After considering each of these factors, I am satisfied that disclosure of the third parties' personal information would be an 'unreasonable' disclosure of personal information.
48. I must now consider the factors as set out in the public interest test in s.11B(3) of the FOI Act.

Factors weighing in favour of release

49. I am satisfied that the release of the documents would promote the objects of the Act as it would provide access to information held by Government.
50. I am not satisfied that the release of the personal information would have any bearing on or relevance to any matter of public debate or promote effective oversight of public expenditure.
51. Finally, the release of the documents containing third parties' personal information would not allow you to access your own information.

Factors weighing against release

52. The disclosure of the personal information of individuals contained in the documents 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 the individuals to their own privacy.
53. Therefore, on balance I am satisfied that releasing the personal information in the documents would be contrary to the public interest and that the information I have deleted in the documents under section 47F(1) of the FOI Act is exempt from release.



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

26 July 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/08/00732
File Number ADF2015/42996

1. Departmental document

Folio	Description	Decision	Legislation
1-3	Cable document	Exempt in part	s.33(a)(iii) s.47F(1)

2. Departmental document

Folio	Description	Decision	Legislation
4-8	Cable document	Exempt in part	s.33(a)(iii) s.47F(1)

3. Departmental document

Folio	Description	Decision	Legislation
9-16	Email trail: <i>RE: Draft cable for comment-dual nationality frameworks</i> Cable: <i>Terrorism: Outreach Regarding Potential Host Government Responses to proposed Citizenship Revocation for Dual Nationals</i>	Exempt in part	s.33(a)(i) s.33(a)(iii) s.47C(1) s.47E(d) s.47F(1)

4. Departmental document

Folio	Description	Decision	Legislation
17-23	Briefing Pack (Part 1) to Minister Dutton for visit to the United Kingdom	Release in full (20 pages are not released as they are fully irrelevant to scope)	

5. Departmental document

Folio	Description	Decision	Legislation
24-37	Briefing Pack (Part 2) to Minister Dutton for visit to the United Kingdom	Exempt in part (21 pages are not released as they are fully irrelevant to scope)	s.47F(1)

6. Departmental document

Folio	Description	Decision	Legislation
38-62	Briefing Pack to Secretary Pezzullo for visit to the United Kingdom	Exempt in part (54 pages are not released as they are fully irrelevant to scope)	s.47F(1)

7. Departmental document

Folio	Description	Decision	Legislation
63-64	Meeting Brief to Minister Dutton for visit to New Zealand	Exempt in part (4 pages are not released as they are fully irrelevant to scope)	s.33(a)(iii)

8. Departmental document

Folio	Description	Decision	Legislation
65-69	Event Brief to Minister Dutton for <i>Australia's Regional Summit to Counter Violent Extremism</i> ; Bilateral Meeting with Malaysian Minister for Home Affairs and Singapore Second Minister for Home Affairs and Second Minister for Foreign Affairs	Exempt in part (37 pages are not released as they are fully irrelevant to scope)	s.47F(1)

9. Departmental document

Folio	Description	Decision	Legislation
N/a (not released)	Ministerial Submission	Exempt in full	s.33(a)(i) s.33(a)(iii) s.47C(1) s.47E(d)

10. Departmental document

Folio	Description	Decision	Legislation
70-73	Situation Report	Exempt in part	s.33(a)(i) s.33(a)(iii) s.47E(d) s.47F(1)

11. Departmental document

Folio	Description	Decision	Legislation
74-76	Meeting Brief to Minister Dutton for a meeting with the New Zealand Minister of Immigration	Exempt in part (11 pages are not released as they are fully irrelevant to scope)	s.47F(1)

12. Departmental document

Folio	Description	Decision	Legislation
77-79	Meeting Brief to Minister Dutton for a meeting with the Deputy Head of Mission, New Zealand High Commission Canberra	Exempt in part (10 pages are not released as they are fully irrelevant to scope)	s.33(a)(iii)

13. Departmental document

Folio	Description	Decision	Legislation
80-83	DIBP/DFAT Joint Secretaries Meeting on Cooperation with New Zealand	Exempt in part (1 page is not released as it is fully irrelevant to scope)	s.33(a)(iii)

14. Departmental document

Folio	Description	Decision	Legislation
84-86	Meeting between Secretary Pezzullo and New Zealand Attorney General	Exempt in part (1 page is not released as it is fully irrelevant to scope)	s.33(a)(iii)

15. Departmental document

Folio	Description	Decision	Legislation
87-88	<i>Counter Terrorism Measures in the Citizenship Act</i>	Exempt in part	s.33(a)(iii)

Attachment C – Extract of relevant legislation

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.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
- (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).

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).

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:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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).