



Attachment A

DECISION RECORD

Request Details

FOI Request: FA 16/03/00493
File Number: ADF2016/10624

Scope of request as refined on 22 June 2016

Documents detailing infringement notices issued under Section 229 of the Migration Act 1958.

- 1. the number and value of infringement notices issued and withdrawn; 2011 and 2015;*
- 2. the number of infringement notices broken down by airline, with the airline names redacted;*
- 3. the country of origin of the passengers, with passenger privacy details redacted, and*
- 4. the summary report of infringement notices issued for the calendar years 2011 and 2015, with the airline names redacted.*

Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests for access to 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 Guidelines issued by the Office of the Australian Information Commissioner (OAIC) under s 93A of the FOI Act (the Guidelines)
- Departmental documents and
- consultation with the relevant business areas.

Reasons for decision

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.

Section 22(1)(a)(i) – exempt material and 22(1)(a)(ii) – material irrelevant to the request

Section 22(1)(a)(i) allows an agency to delete material that is considered exempt.

Section 22(1)(a)(ii) applies if the material is considered to be irrelevant from a document which is only partially relevant to an applicant's FOI request.

I find that some of the documents relevant to your request contain material which is both exempt and irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the document schedule at Attachment B.

Further, you will recall that during the consultation process with the FOI Section, agreement was reached that the Department would remove the names of the airlines and the names and any identifying personal information of the passengers.

The deletion of this material is in accordance with section 22(1)(a)(ii) of the FOI Act. The material deleted under section 22(1)(a)(ii) includes:

- Any information not relevant to the scope of your request
- The names of the airlines, as agreed
- The names and dates of birth of the passengers who received an infringement, as agreed.

The personal information of the names and dates of birth of the passengers has been 'hidden from the document' which was exported from a Microsoft Excel spreadsheet. As such, the documents provided to you with exemption markings do not show the additional columns containing the hundreds of airline passenger's names and dates of birth, as provided to the FOI section. This information was considered not relevant to the scope of your request, and has been removed.

Section 47F Public interest conditional exemption– personal privacy

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person. I have examined the documents and found that parts of the documents contain personal information which would be unreasonable to release to you.

The relevant documents contain 'personal information'

I am satisfied that the documents to which you have sought access contain 'personal information' of the passengers in the form of names, dates of birth, client identity file numbers and infringement notice numbers.

Disclosure would involve the 'unreasonable disclosure of personal information'

The Guidelines note that the personal privacy exemption is designed to prevent the 'unreasonable' invasion of third parties' privacy. In accordance with subsection 47F(2) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, I had regard to the factors set out in section 47F(2) of the FOI Act:

- (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, and
- (d) any other matters that the Department or the Minister consider relevant.

I have considered each of these elements below:

- (a) the specific personal information of the passengers, including names and dates of birth, is not well known
- (b) the infringement notice numbers detailed in the documents, could be linked to the passengers' client identity files
- (c) the personal information is not readily available from publicly accessible sources.

I consider it would be inappropriate to consult with the hundreds of passengers named in the documents, as this would be regarded as an unreasonable diversion of the resources of the Department.

Further, I consider that without a person's formal consent over the potential release of their personal information to you, as required by section 27A [Consultation – documents affecting personal privacy], it would be unreasonable to disclose such information to you.

Further, releasing the infringement notice numbers detailed in the documents would also reveal personal information about passengers, the release of which may enable you to piece together other information to attribute personal information to enable you to identify the individual passengers. This finding is relevant to all documents. The Department is committed to the protection of an individual's right to privacy and therefore, after considering each element of section 47F(2), I am satisfied that disclosure of the personal information would be an 'unreasonable' disclosure of personal information. As such, I am satisfied that the information I have identified in the relevant documents is 'conditionally exempt' under section 47F(1) of the FOI Act. I must now decide whether the information would be contrary to the public interest.

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

On finding documents conditionally exempt under section 47F, I must now consider the factors set out in the public interest test under section 11B(3) of the FOI Act.

Factors favouring disclosure

In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which favour release. They are:

- disclosure would promote the objects of the FOI Act
- disclosure would inform debate on a matter of public importance
- disclosure would promote effective oversight of public expenditure
- disclosure would allow a person to access his or her own personal information.

I acknowledge that release of the personal information would promote the objects of the Act by facilitating and promoting public access to information, and informing debate on a matter of some public importance. While the release of these documents, including the infringement statistics, may provide some information that was of a nature to 'promote effective oversight of public expenditure', I note that the figures are captured in a limited capacity. That in and of itself does not provide a full picture of the oversight of public expenditure in relation to infringements issued in accordance with section 229 of the *Migration Act 1958*. On balance I find that this does not weigh in favour of release. As such, I do not consider that release of the personal information would promote effective oversight of public expenditure nor would it allow you to access your own personal information. I consider that the protection of an individual's right to privacy should be given the utmost importance.

Factors against disclosure

The Guidelines contain a list of factors weighing *against* disclosure which must be considered under section 11B(5) of the FOI Act. However, this is not an exhaustive list of factors that can be taken into consideration.

Factors against release for information identified as conditionally exempt under section 47F(1) include:

- *could reasonably be expected to prejudice the protection of an individual's right to privacy; and*
- *could reasonably be expected to prejudice the fair treatment of individuals.*

The personal information which is conditionally exempt under section 47F(1) is personal information, wholly about a number of third parties, for which the Department is committed to the protection of an individual's right to privacy. An individual has the right to expect that the Department would take all reasonable steps to protect their personal information. On balance, I have given the greatest weight to an individual's right to maintain their privacy.

Having regard to these factors, I am satisfied that the release of the conditionally exempt information under section 47F(1) is 'contrary to the public interest'. As such I am satisfied that this information, as identified in the documents, is conditionally exempt.



Authorised decision maker
Department of Immigration and Border Protection

Email: foi@border.gov.au

29 July 2016

Attachment B - 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:

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).