



22 June 2018

BY EMAIL:

In reply, please quote:

FOI Request: FA 17/10/01008

File Number: ADF2017/112649

Dear

Freedom of Information (FOI) request - Access Decision

On 21 October 2017, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

(the applicant) has authorised you to receive correspondence on their behalf about their FOI request. In this letter, references to 'you' relate to the applicant.

On 20 December 2017 the Home Affairs Portfolio, including the Department of Home Affairs, was formally established. The Department of Home Affairs includes the entirety of the Department of Immigration and Border Protection, the Australian Border Force and the Office of Transport Security from within the Department of Infrastructure and Regional Development. It also includes specific functions from the Attorney-General's Department, the Department of Social Services and the Department of the Prime Minister and Cabinet.

As such a decision has now been made on your request by the Department of Home Affairs (the Department).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

- *Information used by the Department to determine whether or not to interview Protection visa applicants as at 18 May 2017*
- *Information regarding what guidance replaced the policy regarding interviewing Protection visa applicants on 11 May 2017*

On 3rd November you clarified your scope to include the below:

My request was not for policy and I am entirely certain that additional material extraneous to policy exists.

For example, as at 11 May 2017, there existed tables used to assess whether an applicant would be interviewed. Those tables set out countries where an interview may not be necessary and were called "Signatories to relevant international treaties and conventions with a strong record of adherence" and "Citizenships with low historic grant rates".

My question is not what policy is: it is what guidance is given – such as tables or internal guidelines – regarding the question of whether to interview. It cannot simply be that the delegate is at large, particularly given that tables certainly existed. The policy simply states that an interview may not be required in all cases – my question is how the Department determines that question."

2 Authority to make decision

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 records.

3 Relevant material

In reaching my decision, I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- consultation responses from third parties consulted in accordance with the FOI Act
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

4 Documents in scope of request

You have requested information used by the Department to determine whether to interview Protection visa (PV) applicants as at 11 May 2017 and 18 May 2017. You have already been provided with the Department's policies related to interviewing PV applicants as at those dates. You have made a further request about additional guidance provided to decision makers on how to implement this policy. The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 21 October 2017 when your request was received and outlines internal guidance that was in place as at 11 May 2017.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

5 Decision

The decision in relation to the document in the possession of the Department, which falls within the scope of your request is as follows:

- Release one document in part, with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 Section 22 of the FOI Act – deletion of exempt material

I have decided to prepare an edited copy of this document. The grounds upon which the edited copies of this document have been prepared are set out in the Schedule of Documents.

6.2 Section 47E of the FOI Act – Operations of Agencies

Section 47E(d) of the FOI Act provides that documents are 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.

I consider that the disclosure of the parts of the documents marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department. The release of the document in full will be detrimental to the program as it details specific methods for internal handling of the caseload, including specific allowances made for cases where exceptions to the interview guidelines are applied.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Accordingly, I have decided that the documents are conditionally exempt under section 47E(d) 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 below.

6.3 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 the Department, 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:

- I consider that the disclosure of these parts of the document may have a substantial adverse effect on the proper and efficient conduct of the operations of the Department. The release of the documents in full will be detrimental to the protection visa program as it details specific methods for internal handling of the caseload, including specific allowances made for cases where exceptions to the interview guidelines are applied.

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.

7 Explanatory statement regarding the document released

The interim operational instruction document released is no longer in effect. The Department's interview policy for applicants for protection are set out in the Procedural Advice Manual available on LEGENDcom.

Please note that should you wish to seek access to documents available through LEGENDcom you will need to subscribe to gain access. Details on how to subscribe are available on the Department's website. You may be able to access LEGENDcom through one of the major libraries in your state as they may maintain a subscription.

Attached is a document that will assist you to identify those libraries that may have access to LEGENDcom, however, you should contact one of these libraries to confirm if this service is available. See: <http://www.finance.gov.au/policy-guides-procurement/publishing-information/lds/>

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

9 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

OR By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

10 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

11 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

(signed electronically)


Acting Assistant Director, Freedom of Information
Authorised Decision-maker
Department of Home Affairs

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982***

FOI request: FA 17/10/01008
File Number: ADF2017/112649

No.	Date of document	No. of pages	Description	Decision on release	
1.	10/01/2017	2	Operational Instruction	Release in Part	47E(d)