



28 August 2018

██████████
BY EMAIL: ██████████

In reply please quote:

FOI Request: FA 18/02/00406
File Number: ADF2018/17271

Dear Mr Skipsey

Freedom of Information (FOI) request - Access Decision

On 5 February 2018, 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 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:

- (1) *The current version of the document entitled "Countries that may be exempted from the requirement to interview", which was identified by TRIM reference ADD2016/169930 as of 10 May 2017.*
- (2) *If no such document exists as referred to above in (1), the most recently used version of that document.*
- (3) *Any and all previous versions of the document referred to in (1) above, and the dates in which they were used by the Department of Immigration.*
- (4) *Statistics for the numbers and percentage rates at which Protection visa applications made in each calendar year from 2010-present:*
 - (a) *resulted in a grant of a Protection visa by the Department of Immigration at first instance;*
 - (b) *resulted in a refusal to grant a Protection visa by the Department of Immigration which was not subsequently the subject of an application for review to the RRT or AAT;*
 - (c) *resulted in a refusal to grant a Protection visa by the Department of Immigration which was subsequently the subject of an application for review to the RRT or AAT and then remitted to the Department;*
 - (d) *resulted in a refusal to grant a Protection visa by the Department of Immigration which was subsequently the subject of an application for review to the RRT or AAT,*

*in which the decision was affirmed by the RRT or AAT.
(e) remain pending as at the date of this request.*

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)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Documents in scope of request

The Department has identified three documents as falling within the scope of your request. These documents were in the possession of the Department on 5 February 2018 when your request was received.

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 documents in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in full
- Release three documents 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 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.

Some information marked s47E(d) consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

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.

6.2 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *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 with in the document;*

- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The information that I regard to be personal information within Document 1 includes First Assistant Secretary, Elizabeth Hampton's signature on page 2 of the document. This information is not well known and would only be known to a limited group of people with a business need to know. This information is not available from publicly accessible sources.

Disclosure of the statistical information on page 2 of versions 1 and 2 of the documents titled: *Countries that may be exempted from the requirement to interview*, may lead to individuals being identified due to the low cohort numbers of countries of citizenship listed in the table. This information is not well known and would only be known to a limited group of people with a business need to know. This information is not available from publicly accessible sources.

I have decided that the information referred to above is conditionally exempt under section 47F 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 discloser 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 consider that the ability of the Department to utilise email addresses which are not at risk of being maliciously targeted to be in the public interest.
- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act 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 individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

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 Documents 1, 2 and 3

The relevant business area of the Department has advised that the guidelines and instructions released under this FOI and listed below are **not** currently in use by the Department.

The business area provided the following contextual information regarding Documents 1, 2 and 3:

Document 1

Document 1 – Version 1 of *Countries that may be exempted from the requirement to interview*, was in effect between the dates of 16 May 2016 to 19 June 2016.

Document 2

Document 2 – Version 2 of *Countries that may be exempted from the requirement to interview*, was in effect between the dates of 19 June 2016 to 10 January 2017.

Document 3

Operational Instruction: process for assessing permanent protection applications in relation to particular countries, was in effect between the dates of 10 January 2017 and 12 May 2017.

The Department's current interview policy for applicants for protection, are set out in the Protection Visa Procedural Instructions 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:

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)


Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

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

FOI request: FA 18/02/00406

File Number: ADF2018/17271

No	Date of document	No. of pages	Description	Decision on release	
1.	N/A	2	Countries that may be exempted from the requirement to interview – version 1	Release in Part	s.47E(d) s.47F
2.	N/A	2	Countries that may be exempted from the requirement to interview – version 2	Release in Part	s.47E(d) s.47F
3.	10/01/2017	2	Operational Instruction	Release in Part	s.47E(d) s.47F
4.	N/A	4	Statistics – Permanent and Temporary Protection Visa Lodgement cohort	Released in full	N/A