



Australian Government

Department of Immigration and Border Protection

**Attachment A**

**DECISION RECORD**

**Request Details**

FOI Request FA 14/03/00205

File Number ADF2014/7715

**Scope of request**

*Correspondence between immigration and Border Protection minister Scott Morrison's office and Defence Minister David Johnston's office relating to claims by asylum seekers of burns to their hands during a boat intercepted by Australian authorities during the period of December 2013 and January-February 2014.*

**Documents in scope**

1. Email correspondence between the Department of Immigration and Border Protection Minister Morrison's office and Defence Minister David Johnston's office during the period of December 2013 through to and including February 2014 – containing 10 folios.

**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 departmental records.

**Information considered**

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government;
- The department's FOI handbook

**Reasons for decision**

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

## **FREEDOM OF INFORMATION ACT 1982 - Section 22(1)(a)(ii)**

### **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.

I have removed information under s.22(1)(a)(ii) as irrelevant to the scope of your request. You have sought information from the period December 2013 to February 2014 only. Therefore, any correspondence not dated in that range has been deleted. Further to that, you have also specified that you are seeking correspondence between the Minister of Immigration and Border Protection's Office and the Minister for the Defence's Office. Therefore, any correspondence that occurred with other parties during that time has been exempt. This includes emails to other agencies not specified by you in your request.

I have removed from scope any information not relating to claims by asylum seekers of burns to their hands, or claims of abuse. Also considered out of scope are any briefings to either Minister regarding other matters, or other events participated in by the Minister that do not relate to the scope of your request.

I have also redacted my name at the top of the emails, which printed as a result of those emails being sent to me for this request, as I have determined my name on those emails to be out of scope.

### **Conditionally exempt documents**

FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The FOI Act now 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

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 personal 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.*

The objects of the 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

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) FOI Act).

The AIC has since 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).

The relevant elements that weigh against disclosure in this case are:

*Whether disclosure of the personal information could reasonably be expected to:*

- (a) prejudice the protection of an individual's right to privacy, including where:*
  - i. the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
  - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*

### **FREEDOM OF INFORMATION ACT 1982 - Section 47F**

#### **Public interest conditional exemptions—personal privacy**

- (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.

*Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).*

The document that is exempt, in part, under section 47F of the FOI Act contains personal information.

Having formed the view that the document is of a kind to which section 47F does apply, I am required to consider whether disclosure of the document would be unreasonable. I took the following information into consideration:

- The information is not your personal information.
- Every person has the right to expect that their personal information will be securely maintained by the department.
- The information does not appear to be in the public forum.

On balance I believe it would be unreasonable to release the information redacted in the document.

Having formed the view that the document is of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the document would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- there is a general public interest in making information held by the Government accessible to the public;
- inform debate on a matter of public importance; and
- the need for openness and accountability of the department's operations.
- the extent to which the information is known by the public.

Arguments that against disclosure of the documents include:

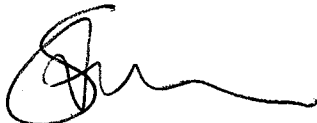
- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy
- prejudice the fair treatment of individuals
- prejudice security, law enforcement, public health or safety

The information contained within the identified documents is information that is not generally publicly available. Staff mobile phone numbers are in some instances, their personal mobile numbers and would disclose personal information pertaining to that individual if it were released to you. While, in some instances, this information may be available to members of the public, it is not widely available or in the public interest to be made widely available. The department is obliged to take action to prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight.

I have also redacted the names of journalists referred to in emails, as it would unreasonably disclose their identity.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

Having reached that view, s.22(2) of the FOI Act requires me to provide you with an edited copy of the documents, with the exempt information deleted under s.22(1)(b).



Steven HOCKING  
Assistant Director  
FOI and Privacy Policy Section  
Ministerial, Executive and External Accountability Branch  
Department of Immigration and Border Protection  
Telephone (02) 6264 1007  
Email [foi@immi.gov.au](mailto:foi@immi.gov.au)

23 May 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/03/00205

File Number ADF2014/7715

1. Departmental File: Email Correspondence

Folio	Description	Decision	Legislation
1	Email Correspondence	Exempt in part	s.22(1)(a)(ii) s.47F(1)
2	Email Correspondence	Exempt in part	s.47F(1)
3	Email Correspondence	Exempt in part	s.22(1)(a)(ii) s.47F(1)
4	Email Correspondence	Exempt in part	s.22(1)(a)(ii)
5	Email Correspondence	Exempt in part	s.22(1)(a)(ii)
6	Email Correspondence	Exempt in part	s.22(1)(a)(ii)
7	Email Correspondence	Exempt in part	s.22(1)(a)(ii)
8	Email Correspondence	Exempt in part	s.22(1)(a)(ii)
9	Email Correspondence	Exempt in part	s.22(1)(a)(ii) s.47F(1)
10	Email Correspondence	Release in full	



Australian Government

Department of Immigration and Border Protection

Attachment C

EXTRACT OF RELEVANT LEGISLATION

S.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:

**people** our business

- (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).

## **S.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.



## S.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).

s. 22(1)(a)(ii)

**From:** Dodd, Mark MR <mark.dodd@defence.gov.au>  
**Sent:** Friday, 24 January 2014 1:34 PM  
**To:** s. 22(1)(a)(ii); Julian LEEMBRUGGEN  
**Cc:** Gilding, Simeon MR  
**Subject:** FW: VCDF interview with Ian McPhedran [DLM=For-Official-Use-Only]  
**Attachments:** Untitl2.gif; twitter\_logo\_sm.png; facebook\_logo\_sm.jpg

For-Official-Use-Only

s. 22(1) Julian, Furthur OSB asylum seeker abuse allegations - Please note, cheers rgds Mark  
( ) (ii)

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From: Reis, Alison MS  
Sent: Friday, 24 January 2014 13:28  
To: Dodd, Mark MR; Horton, Rebecca MS; 'WARDELL Matthew'  
Cc: s. 22(1)(a)(ii)  
Subject: VCDF interview with s. 22(1)(a)(ii) [DLM=For-Official-Use-Only]

For-Official-Use-Only

Mark, Bec and Matt,

s. 22(1)(a)(ii)

During the i/v s. 47F(1) asked AM Binskin about the IMA's allegations of mistreatment.

VCDF stated

- \* We take any allegations seriously.
- \* He has seen no information to substantiate the claims of mistreatment.
- \* He has the highest respect for Navy pers and ADF pers conducting border protection ops - they're well trained, very mature and there is no evidence to substantiate the claims.

s. 47F(1) asked directly whether ADF pers had provided first aid.

VCDF stated that

- \* It is his understanding that they were treated and given first aid.

Regards, Ali

Alison Reis  
Strategic Communications Advisor to  
General David Hurley

Chief of the Defence Force

T 02 6265 3398

s. 47F(1)

F 02 6265 1345

E [alison.reis@defence.gov.au](mailto:alison.reis@defence.gov.au)<<mailto:alison.reis@defence.gov.au>>

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@DavidHurley\_CDF<[http://www.twitter.com/DavidHurley\\_CDF](http://www.twitter.com/DavidHurley_CDF)>  
Hurley<<http://www.facebook.com/GeneralDavidHurley>>

General David

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s. 22(1)(a)(ii)

-----Original Message-----

From: Kerri GRIFFITHS [mailto:Kerri.GRIFFITHS@IMMI.gov.au]

Sent: Thursday, 6 February 2014 4:29 PM

To: Dodd, Mark MR; s. 22(1)(a)

Cc: WARDELL Matthew; s. 22(1)(a)(ii) ; LEEMBRUGGEN Julian (IMMI)

Subject: Response to Fairfax questions - [SEC=UNCLASSIFIED]

UNCLASSIFIED

I will send through this response to s. 47F(1) shortly. Let me know if there are any issues.

QUESTIONS: s. 22(1)(a)(ii)

Was an asylum seeker sprayed with capsicum spray causing him to fall and burn his hand on the hot exhaust pipe?  
Did Navy members grab the wrists of three asylum-seekers and one by one force their hands on to the hot pipe?  
Is it the ADF's contention that the men had already suffered burns to their hands before Navy intercepted the asylum seeker boat? Or that the injuries were all accidents caused during scuffles or altercations?

s. 22(1)(a)(ii)

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QUESTIONS: What steps did the ADF take to investigate the claims by asylum-seekers that their hands were deliberately burned by members by being forced to touch or hold a hot pipe from the boat's engine?

s. 22(1)(a)(ii)

Has the ADF sought to interview any of the asylum seekers involved in these claims or get access to the interview recordings or transcripts from Indonesian police?

s. 22(1)(a)(ii)

RESPONSES: (attribute to Minister)

"The Government does not give credibility to malicious and unfounded slurs being made against our Navy personnel and rejects outright any allegations of unprofessional conduct by our people serving in Operation Sovereign Borders. If media outlets wish to give credibility by publishing such unsubstantiated claims, that is a matter for them.

"I know and trust that our Navy and Customs and Border Protection Service act in accordance with their training and lawful orders and would only use force where necessary and appropriate to deal with threatening and non-compliant behaviour, as appropriate.

"There are clear rules and guidelines to govern their behaviour and use of force and they are well trained to act in accordance with these rules. I'll back their professionalism and integrity every day over the self-serving claims of those unhappy that they were denied what the people smugglers promised them."

"It is also not the Government's policy to give people smugglers a 'how to guide' on our operations by providing responses on the issues raised. To do so would put both the people who protect our borders and the operations that are successfully stopping the boats at risk.

s. 22(1)(a)(ii)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]


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s. 22(1)(a)(ii)



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s. 22(1)(a)(ii)

**From:** Horton, Rebecca MS <rebecca.horton@defence.gov.au>  
**Sent:** Thursday, 6 February 2014 2:19 PM  
**To:** Julian LEEMBRUGGEN; Kerri GRIFFITHS  
**Cc:** Dodd, Mark MR  
**Subject:** FW: FOR URGENT MINDEF CLEARANCE - Media enquiry - Response to s. 47F(1)  
[SEC=UNCLASSIFIED]  
**Attachments:** image001100140.jpg; s. 22(1)(a)(ii)  
**Importance:** High

UNCLASSIFIED

Julian/Kerri

You may have already seen this but just in case, for your information - looks like mostly old ground.

Bec

Rebecca Horton  
Media Adviser  
Office of Senator the Hon David Johnston Minister for Defence  
Perth: 08 9260 5082 | Canberra 02 6277 7800  
s. 47F(1)

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

**From:** Dodd, Mark MR <mark.dodd@defence.gov.au>  
**Sent:** Thursday, 6 February 2014 10:38 AM  
**To:** Julian LEEMBRUGGEN  
**Subject:** FW: If asked about ABC asylum seeker abuse claims.. [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi Julian, s. 22(1)(a)(ii) Given event will be followed by a presser, protectively preparing TPs to cover some potential questions including s. 22(1)(a)(ii) and ABC allegations, cheers Mark

s. 22(1)(a)(ii)

**From:** Dodd, Mark MR  
**Sent:** Thursday, February 06, 2014 09:40 AM  
**To:** Gilding, Simeon MR; s. 22(1)(a)(ii)  
**Subject:** If asked about ABC asylum seeker abuse claims.. [DLM=For-Official-Use-Only]

For-Official-Use-Only

Simeon: As discussed -

s. 22(1)(a)(ii)

ITEM 1) if asked about the ABC asylum seeker abuse claims -

MINISTER:

I AM HERE TODAY TO MARK THE CENTENARY OF THE ROYAL AUSTRALIAN NAVY'S SUBMARINE SERVICE BUT I STAND FIRMLY BEHIND THE COMMENTS MADE BY MY PARLIAMENTARY COLLEAGUES. I BELIEVE GEORGE ROBERTS COVERAGE OF THE ASYLUM SEEKER ABUSE ALLEGATIONS MERITS THE ABC BEING PUT ON THE PROGRAMS OF CONCERN LIST.

THE ALLEGATIONS AND LETS BE QUITE CLEAR ABOUT THIS - THAT IS ALL THEY WERE - AMOUNTED TO A SLUR AGAINST THE MEN AND WOMEN OF THE ROYAL AUSTRALIAN NAVY. THE CHIEF OF NAVY REJECTED THE CLAIMS - NAVY PERSONNEL PROVIDED FIRST AID TO THOSE WHO WERE HURT - SO THIS WARRANTS NOTHING LESS THAN AN UNRESERVED APOLOGY FROM ABC MANAGEMENT.

(IF PRESSED)

NOW LIKE MOST AUSTRALIANS I LOVE MY ABC BUT AS A FORMER PRACTISING LAWYER, I WOULD STRONGLY SUGGEST THE CLAIMS CARRIED BY CORRESPONDENT GEORGE ROBERTS THAT NAVY PERSONNEL ABUSED ASYLUM SEEKERS FAILED TO MEET THE ORGANISATION'S OWN STANDARDS OF FAIRNESS AND OBJECTIVITY. THE STORY SHOULD NOT HAVE GONE TO AIR GIVEN THE SPURIOUS NATURE OF THE CLAIMS - REMEMBER THE OLD ADDAGE - IF IN DOUBT LEAVE IT OUT. BUT LET'S NOT DUMP ALL THE BLAME ON POOR OLD GEORGE - WHERE WERE THE ABC'S EDITORS, SUB EDITORS AND FACT CHECKERS - MISSING IN ACTION IT SEEMS.

s. 22(1)(a)(ii)

Mark Dodd  
Senior Media Adviser  
Office of Senator the Hon David Johnston Minister for Defence  
(t) 02 62777923  
s. 47F(1)

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