



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA14/03/01502
File Number ADF2014/10907

Scope of request

“Dear Assistant Minister for Immigration and Border Protection

I am apply for following information under the FOI Act:

- 1. All emails sent from the Chief of Staff of Assistant Minister Cash on 25 February 2014 referring to the review of the 457 visa programme; and*
- 2. All emails from Ministerial staffer Brooke Thomas on 25 February 2014 referring to the review of the 457 visa programme.”*

Documents in scope

1. Email dated 25 February

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; and
- 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.

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

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.

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).

people our business

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

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

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

A document is 'conditionally exempt' under s.47F(1) of the Act if its release would 'involve the unreasonable disclosure of personal information about any person (including a deceased person)'. A conditionally exempt document **must** be released under the FOI Act unless the release would be 'contrary to the public interest'. The Act requires me to undertake a 2 step process in deciding if an exemption applies.

Would the disclosure be an 'unreasonable' disclosure of personal information?

The exemption in s.47F(1) of the Act will only apply if I am satisfied that the disclosure would involve 'unreasonable' disclosure of a third party's personal information. The Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I 'must' have regard to the factors set out in s.47F(2) of the 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;
- (d) any other matters that I consider relevant.

I have considered each of these elements separately below.

(a) Extent to which the information is known

Although the information relating to the 457 review is known, the private contact details of the individuals involved is not in the public domain.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

(b) Whether the person to whom the information relates is known to be associated with the matters in the document

The private contact details of the individuals to whom the information relates is not in the public domain. On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

(c) The availability of the information from publicly available sources

The private contact details of the individuals to whom the information relates is not available from public sources. On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

(d) Any other matters that the agency considers relevant

The information is not your personal information. This weighs against the release being reasonable.

Every person has the right to expect their personal information will be securely maintained by the department. This weighs against the release being reasonable.

No purpose would be achieved by releasing the third party information. This weighs against the release being reasonable.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

After considering each element in s.47F(2), I am satisfied that disclosure of the personal information would be an 'unreasonable' disclosure of personal information.

Therefore, I am satisfied that the information I have identified in the relevant documents is 'conditionally exempt' under s.47F(1) of the Act.

Is the release contrary to the public interest?

As a result, I must now consider the factors set out in the public interest test in s.11B(3) of the Act.

Factors favouring disclosure

I have considered the factors set out in s.11B(3) of the Act which were discussed above.

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against disclosure

As discussed above, the AIC has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the Act.

I consider that these factors are relevant to the documents in question:

The disclosure of the personal information could reasonably be expected to prejudice the protections of an individual's right to privacy.

It is a core Government concern to maintain the integrity of the information it holds and in maintaining of an individual's privacy.

On balance, I am satisfied that the disclosure of the information I have identified as 'personal information' would amount to an 'unreasonable disclosure of personal information'. Further, I am satisfied that the release of the personal information in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the personal information in the documents is exempt from release under section 47F(1) of the 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).

Mel Heggart
Authorised decision maker
FOI and Privacy Policy Section
Ministerial, Executive and External Accountability Branch
Department of Immigration and Border Protection
Telephone 02 6264 3131
Email foi@immi.gov.au

17 April 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA14/03/01502
File Number ADF2014/10907

1. Document:

Number of pages	Description	Decision	Legislation
2	Email – Re:457 Review -14/02/2014	Exempt in part	S47F(1)

Attachment C

FREEDOM OF INFORMATION ACT 1982 - SECT 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](#)).

FREEDOM OF INFORMATION ACT 1982 - SECT 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.

From: [Brooke THOMAS](#)
To: [Karin MAIER](#); [Mark DOMINICK](#)
Cc: [David WILDEN](#)
Subject: RE: 457 Review [DLM=For-Official-Use-Only]
Date: Tuesday, 25 February 2014 10:17:02 AM

Oh please contact the panel and get going! I've spoken to Mr Azarias this morning and he's dead keen to get started.
cheers
Brooke

Sent with Good (www.good.com)

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

From: Karin MAIER
Sent: Tuesday, February 25, 2014 09:58 AM AUS Eastern Standard Time
To: Mark DOMINICK; Brooke THOMAS
Cc: David WILDEN
Subject: RE: 457 Review [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi Mark and Brooke

Just wanted to touch base to confirm whether you would be comfortable with us now contacting the panel members to confirm administration arrangements and also organise the first meeting?

We can hold off on advising our internal stakeholders of review until the release makes its way to the Minister's media centre – but are keen to get moving on the admin stuff.

Thanks

Karin

Karin Maier
Director
457 Policy Section
Department of Immigration and Border Protection
Telephone: (02) 6264 3571
S. 47F(1)
Email: karin.maier@immi.gov.au
Blog: migrationblog.immi.gov.au

For-Official-Use-Only

From: Mark DOMINICK
Sent: Monday, 24 February 2014 7:04 PM
To: Garry FLEMING
Cc: David WILDEN; Karin MAIER; Brooke THOMAS
Subject: RE: 457 Review [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi Garry

I have it on good word that the 457 Review will be in the press tomorrow. The Media Release has been given to The Australian this afternoon, and will be more broadly released in the morning.

Cheers
Mark

For-Official-Use-Only

From: Mark DOMINICK
Sent: Monday, 17 February 2014 4:31 PM
To: Garry FLEMING; David Wilden (david.wilden@immi.gov.au); Karin MAIER

Released by DIBP under the
Freedom of Information Act 1982

Subject: 457 Review [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi Garry / David / Karin

Just a quick heads up – The media release announcing the 457 Integrity Review is likely to finalised tonight for publication tomorrow. I'll let you know in the morning if there has been a change of plan.

Cheers
Mark

Mark Dominick | Adviser
Office of the Assistant Minister for Immigration and Border Protection
Suite M1.51 | Parliament House Canberra
t. 02 6277 7178 | s. 47F(1)
Email: mark.dominick@immi.gov.au

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