



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 16/01/01847  
File Number ADF2016/12783

#### 1. Scope of request

*“Any information, records, paper documents, electronic records, or the contents of any records, paper documents or electronic records (including copies of such records and documents), held or accessible by the Department of Immigration and Border Protection (‘the Department’), in relation to:*

1. Any **explanatory memoranda or documents** produced on or after 26 June 2014 until and including 15 January 2016\* explaining or elaborating on the meaning of the provisions or ‘expectations’ of the Code of Behaviour for Subclass 050 Bridging (General) visa holders (**‘the Code’**); and
2. The total number of asylum seekers or ‘illegal maritime arrivals’ (IMAs) who have **signed** the Code (from 26 June 2014 until and including 15 January 2016); and
3. The total number of asylum seekers or IMAs who have **refused (or for any other reason failed) to sign the Code** (from 26 June 2014 until and including 15 January 2016); and
4. The total number of **complaints or reports** that the Department has received in relation to **alleged breaches of the Code** by asylum seekers or IMAs (from 26 June 2014 until and including 15 January 2016), including:
  - a. A description of the **types of alleged breaches** (including the ‘expectation(s)’ or article(s) of the Code that were allegedly breached); and
  - b. A description of the **behaviour** of the asylum seeker or IMAs that was alleged to be in breach of the Code; and
  - c. A description of the **types of complainants** (e.g. a member of staff of the Department, a police officer, a school principal, a member of the public, an IMA etc.); and
  - d. A description of any **action that was taken** by the Department in relation to any alleged breaches; and
  - e. A description of **any referrals to the police or DPP** of behaviour in breach of the Code for further investigation or criminal prosecution; and

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\* In the alternative, for ease of collation purposes and for all date ranges outlined in this request, from the **date of the Code’s inception** until and including 15 January 2016.

5. The total number of asylum seekers or IMAs who have been found by the Department to have **breached the Code** (from 26 June 2014 until and including 15 January 2016), including:
  - a. A description of the **types of breaches** (including the 'expectation(s)' or article(s) of the code that were breached); and
  - b. A description of the **behaviour** of the asylum seeker or IMAs that was found to be in breach of the code; and
  - c. A description of the **complainants** (e.g. a member of staff of the Department, a police officer, a school principal, a member of the public, an IMA etc.); and
  - d. A description of any **action that was taken, or sanctions that were imposed** by the Department in relation to the breaches (e.g. bridging visa was cancelled, income support payments were reduced, person was transferred to an offshore or onshore detention centre); and
  - e. A description of **any family member(s) separated** due to breaches of the Code; if so, any consideration of the effects of family separation in enforcement of the Code; and
6. The total number of asylum seekers or IMAs who have been **transferred to onshore or offshore detention centres** as a result of breaching the Code; and the **location** of those detention centres; and
7. The total number of asylum seekers or IMAs who have been found to be in **breach of the Code and also charged with a criminal offence for the same conduct**; if so, the law(s) that the asylum seekers/IMAs were charged with, and whether or not they were convicted; and
8. Any document, guidelines or protocols concerning how a breach of the Code is to be dealt with by the Department or other body (for example, the NSW Police or the NSW Director of Public Prosecutions) **when the alleged conduct also amounts to a criminal offence**; and
9. Any document, guidelines or protocols relating to the process of **internal or external review** of decisions made by the Department in relation to breaches of the Code; and
10. A description of all, if any, **internal or external reviews or appeal processes** that have been instigated after an asylum seeker or IMA has been found to have breached the Code, and the outcome of such reviews or appeal processes; and

**Any documents, guidelines or protocols relating to how alleged breaches of the Code should be adjudicated, include any guidance as to the standard and burden of proof and/or admissible forms of evidence."**

2. On 30 August 2016 the scope of your request was redefined as:

*"Given the time that has lapsed since our request, is Department was willing to allow an amendment to the request to extend its scope to include action taken under the Code of Conduct up until or including July 2016? Or to extend the timeframe of the request by several months, if current data is more difficult to access?"*

### Documents in scope

3. Seven documents have been identified as being within scope of your request. The documents are detailed at Attachment B – Schedule of Documents.

### Authority to make decision

4. 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

5. In reaching my decision, I have considered the following:
  - the terms of your request;
  - the *Freedom of Information Act 1982*;
  - the Australian Information Commissioner's guidelines relating to access to documents held by government;
  - Departmental documents, identified in the Schedule of Documents; and
  - consultations with relevant business area/s.

### Decision

6. I note that in relation to **Parts One, Eight, Nine and Ten** of your request you were directed to publically available information on 31 August 2016. Therefore, the Department has not processed these parts of your request under the formal provisions of the FOI Act.
7. In relation to the other parts of your request, the Department has identified seven documents which address these parts.
8. 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.
9. 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).
10. 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.
11. In relation to the documents within scope of your request I have decided to:
  - release documents One and Two in full;
  - exempt in part documents Three, Four, Five and Seven; and
  - exempt in full document Six from release.

## Exemptions applied to the documents

12. Exemptions were applied to the documents on the following grounds:

### **Section 47E(d) – have a substantial adverse effect on the proper and efficient conduct of the operations of an agency**

13. Section 47E(d) provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

14. The material exempted under s.47E(d) in document Six consists of policy guidance information for case managers regarding:

- Applying the Code of Behaviour and linking it to the breach of visa condition 856;
- Guidance for case managers in relation to consequence options, where a breach of visa condition 8566 has occurred; and
- Methods and considerations for assessing suspensions or reductions in CAS/ASAS payments.

15. Release of this information would provide external parties sufficient information to circumvent the Department's Code of *Behaviour triage* and *Breach assessment* strategies, should they wish to do so, subsequently reducing the effectiveness of the Department's Code of Behaviour compliance activities.

16. The material exempted under s.47E(d) in document Seven consists of procedural guidance information for case managers regarding:

- Requesting information from internal or external stakeholders;
- Code of Behaviour assessment writing tips – pre-assessment counselling or discussion; and
- Code of Behaviour assessment templates.

17. Release of this information would provide external parties sufficient information to circumvent the Department's Code of *Behaviour Breach assessment* processes, should they wish to do so, subsequently reducing the effectiveness of the Department's Code of Behaviour compliance activities.

18. Additionally, the material exempted under s.47E(d) in document Seven consists of operational email addresses that are not available in the public domain. Release of this information could have the potential to impede the operations of the Department if the addresses were to be targeted with malicious emails or spam.

19. On this basis, I am satisfied that release of the information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Department's operations. I am therefore satisfied that the material in issue is conditionally exempt under s.47E(d) of the Act.

### ***Application of the public interest test***

20. While I have found that conditional exemption under s.47E(d) of the FOI Act applies to the information outlined above, s.11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.
21. In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which point in favour of release. These factors are:
- a) whether release would promote the objects of the FOI Act;
  - b) whether release would inform debate on a matter of public importance;
  - c) whether release would promote effective oversight of public expenditure; and
  - d) whether release would allow a person to access his or her own personal information.
22. I acknowledge that release of the documents without the exemptions made under s.47E(d) would promote the objects of the FOI Act, through facilitating and promoting public access to information.
23. I consider that release of the information would inform debate on a matter of some public importance.
24. I do not consider that release of the information would promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
25. In contrast, I consider that the ability of the Department to maintain an effective Code of Behaviour process to be strongly in the public interest as it assists with promoting community safety.
26. In addition, 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.
27. Taking into account the above matters, on balance, I consider that disclosure of the information in the documents exempted under s.47E(d) to be contrary to the public interest. Accordingly, I have decided that the documents are exempt in part or full as applicable under s.47E(d) of the FOI Act. The exemptions have therefore been applied to the documents released.

### **47F(1) – Personal privacy**

28. Section 47F(1) of the Act provides:

*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).*

*The relevant documents contain 'personal information'*

29. I am satisfied that the documents to which you have sought access contain 'personal information', being personal identifiers and the private details of persons who have breached the Code of Behaviour and subsequently had cancellation of their visa considered or enacted by the Department.

*Disclosure would involve the 'unreasonable disclosure of personal information'*

30. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.

31. These factors are:

- 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; and
- d) any other matters that the agency or Minister considers relevant.

32. Documents Three, Four and Five contain Departmental case management information regarding Code of Behaviour breach investigations that potentially led to visa cancellations of the persons concerned.

33. I consider that individuals would be easily identifiable if the information contained in the document were to be combined with publicly available information, for example, if the information contained in the '*Location by State*' and '*Nationality*' columns were to be combined with the '*Alleged Breach*', '*Comments*' and '*Referral date and action*' columns, a reader of the document could conduct further research to determine who the individual was using publicly available information.

34. In addition, the visa cancellation information contained in the 'Assessor Decision' column of documents Three, Four and Five is not available from publicly accessible sources.

35. As such, I consider that the disclosure of a combination of information in documents Three, Four and Five would be an unreasonable disclosure of personal information. It is therefore conditionally exempt from release, subject to a public interest test.

#### **Application of the 'public interest' test**

36. I acknowledge that release of the document without the exemptions made under s.47F(1) would promote the objects of the FOI Act, through facilitating and promoting public access to information.

37. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.


38. In contrast, I consider that the protection of the individuals' right to privacy should be given the utmost importance.

39. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the documents is contrary to the public interest. Accordingly, I have decided that the documents are exempted in part under s.47F(1) of the FOI Act.

### **Deletion of irrelevant material**

40. The material deleted under section 22(1)(a)(ii) as irrelevant material includes any information not relevant to the scope of your request, being:
- the names and direct contact details of Departmental and contracted service provider staff (although the names of Departmental senior executive service staff have been retained, if applicable);
  - Departmental system, filing and process references; and
  - any information relating to the forwarding or printing of documents, where such action was taken by the Department for the purpose of processing this FOI request.

*(signed electronically)*

  
Authorised decision maker  
Department of Immigration and Border Protection

Email [foi@border.gov.au](mailto:foi@border.gov.au)

6 December 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/01/01847  
File Number ADF2016/12783

No.	Date of document	Folio	Description	Decision on release	
1.	24/10/2016	1	IMAs who have signed the code 26 June 2014 - 1 July 2016	Released in full	N/A
2.	N/A	2	IMAs who have not signed the code	Released in full	N/A
3.	N/A	3-7	30 April 2015 Code of Behaviour Assessment Spreadsheet 5 May 2015	Irrelevant information deleted Exempted in part	s.22(1)(a)(ii) s.47F(1)
4.	N/A	8-18	2016 Code of Behaviour Assessment Spreadsheet	Irrelevant information deleted Exempted in part	s.22(1)(a)(ii) s.47F(1)
5.	N/A	19-28	POST 1 May 2015 Code of Behaviour Assessment Spreadsheet	Irrelevant information deleted Exempted in part	s.22(1)(a)(ii) s.47F(1)
6.	N/A	N/A	Draft: Implementation of the Code of Behaviour Policy Guidelines	Exempted in full	s.47E(d)
7.	30/9/2015	29-46	Code of Behaviour Assessment Standard Operating Procedures	Irrelevant information deleted Exempted in part	s.22(1)(a)(ii) s.47E(d)



## **Attachment C – Extract of relevant legislation**

### **11B Public interest exemptions--factors**

#### *Scope*

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

#### *Factors favouring access*

(3) Factors favouring access to the document in the public interest include 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.

#### *Irrelevant factors*

(4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

- (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.

#### *Guidelines*

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## **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.

## **23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal,

authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

### **Section 47E – certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

### **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.