



Attachment A

DECISION RECORD – VARIED DECISION UNDER SECTION 55G OF THE FOI ACT

Request Details

FOI Request: FA 16/04/01146
File Number: ADF2016/16821

Scope of request

1. On 8 April 2016 you requested:

All reports and audits relating to fraud allegations surrounding IHMS's delivery of their health services contracts in immigration detention dating since July 2015.

Documents in scope

2. Three documents were found to be within the scope of your request. These documents are detailed in the Schedule of Documents (Attachment B).
3. On 6 May 2016, following receipt of a notice under section 24AB of the FOI Act, you agreed to exclude from the scope of the request 918 pages of attachments to Document 1.

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. I was not the decision maker for the original decision made on 22 June 2016.

Information considered

5. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - The Departmental documents identified in the Schedule of Documents;
 - Consultations with relevant business areas;
 - The Australian Information Commissioner's guidelines relating to access to documents held by government; and
 - Comments from the Office of the Australian Information Commissioner in relation to its review of the Department's original decision.

Reasons for decision

6. 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.
7. 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).
8. 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.

Exemptions applied to the document under s.22(1)(a)(i)

9. The Schedule of Documents (Attachment B) and the documents released detail the exemptions that have been applied. Exemptions were applied on the following grounds:

Section 47C – Deliberative processes

10. A document is conditionally exempt under s.47C(1) of the FOI Act if it includes deliberative matter. Deliberative matter is:

...content that is in the nature of, or relating to either:

- *an opinion, advice or recommendation that has been obtained, prepared or recorded*
- *a consultation or deliberation that has taken place*
- *in the course of, or for the purposes of, a deliberative process of the agency or Minister.*

(Paragraph 6.56, Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982)

11. I am satisfied that the documents contain deliberative matter. The relevant material in the documents comprises detailed discussion by Departmental staff (Documents 1 and 3) and contracted staff (Document 2) of evidence pertaining to the allegations made against IHMS. The material includes the results of consultations, recorded opinions and recommendations.
12. Parts of the deliberative material are speculative in nature in that they are based on officers' views of probabilities rather than conclusive evidence. Such views, although included in the review reports, do not necessarily represent the views of the Department.

Application of the 'public interest' test

13. While I have found that the conditional exemption in s.47C(1) of the FOI Act applies to the information outlined in paragraph 11 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.

14. In determining whether disclosure would be contrary to the public interest, s.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.
15. I acknowledge that release of the information subject to conditional exemption under s.47C(1) would promote the objects of facilitating and promoting public access to information.
16. While the potential misconduct of companies contracted by the Federal Government is a matter of public importance, the allegations made against IHMS have not featured in public debate during 2016-17. I have therefore have given this factor little weight.
17. Release of the information would promote effective oversight of public expenditure – I have given this factor moderate weight.
18. Release of the information would not allow a person to access his or her own personal information.
19. In contrast to the factors favouring release, I note that the material contains discussion regarding a sensitive matter (alleged misconduct by IHMS), including assessment, opinions and recommendations arising from the review of commercially sensitive information. Some of the material is speculative in nature and does not necessarily represent the Department's views or conclusions.
20. In this instance release of the information would reveal commercially sensitive information including the content of Departmental discussion about a service provider's (IHMS's) performance.
21. The release of this information could reasonably be expected to adversely impact the working relationship between the Department and the contracted service provider (IHMS) and jeopardise the ability of the Department to obtain detailed information from any service provider when reviewing allegations of inappropriate conduct.
22. On balance, I have decided that the public interest lies in not disclosing the material assessed as deliberative matter in this instance. The documents are therefore exempted in part under s.47C(1) of the FOI Act.

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

23. 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.
24. The material exempted under s.47E(d) comprises the opinions of Departmental officers regarding IHMS's conduct and performance. The material includes some speculative matter.

25. The material includes opinions about IHMS's conduct and performance which is adverse to IHMS and if released, could reasonably be expected to cause significant damage to the working relationship between the Department and IHMS.
26. Release of the information could also be reasonably expected to limit the willingness of the Department to include candid assessments of service provider performance in future reviews, based on the expectation that such information would likely enter the public domain to the detriment of the working relationship with the service provider.
27. 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

28. 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.
29. While the potential misconduct of companies contracted by the Federal Government is a matter of public importance, the allegations made against IHMS have not featured in public debate during 2016-17. I have therefore have given this factor little weight.
30. Release of the information would promote effective oversight of public expenditure – I have given this factor moderate weight.
31. Release of the information would not allow a person to access his or her own personal information.
32. There has been some passage of time since the matters were raised in the public domain (by the Guardian Australia) and when the Departmental reviews were conducted. It is also in the public interest to release information relating to potential fraud by taxpayer funded businesses. However, I consider that sufficient information is to be released under this varied decision to address the public interest. I also consider it to be in the public interest for the Department to have an effective working relationship with its service providers, which continue to provide services in a contentious and difficult area of government policy.
33. It is also important the Department be able to include candid assessment of sensitive matters within its reviews, for the purpose of informing Departmental actions to address any operational shortcomings.
34. 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 under s.47E(d) of the FOI Act. The exemptions have therefore been applied to the documents released.

Section 47F – personal privacy

35. 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'

36. I am satisfied that Document 2 to which you have sought access contain 'personal information', being identifying information of the contracted staff from an external business which authored the Document.

Disclosure would involve the 'unreasonable disclosure of personal information'

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

38. 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.

39. The personal information in the documents is not well known or available in publicly accessible sources. As such, I consider that disclosure of the personal information in the document would be unreasonable. The personal information is therefore conditionally exempt from release, subject to a public interest test.

Application of the public interest test

40. While I acknowledge that release of the personal information in the document would promote the objects of facilitating and promoting public access to information, I consider that the release of individual identifying and personal information would make a negligible further contribution to public debate.

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

42. Taking into account the above matters, on balance, I consider that disclosure of the personal information in Document 2 is contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47F of the FOI Act. The exemption has therefore been applied to the document released.

Section 47G(1)(a) – business information which would or could adversely impact a person's business affairs

43. The exempted information comprises discussion of evidence related to the allegations made against IHMS. The discussion includes consideration of commercially sensitive material and assessments and opinions about IHMS performance.

44. If released, this information could adversely impact IHMS's commercial activities by revealing commercially sensitive material (including detail of IHMS processes and procedures) as well as Departmental/contractor assessment/opinions of IHMS performance. Such detailed performance assessment is commercially sensitive.

45. I am therefore satisfied that the information specifically identified in the relevant documents is conditionally exempt under s.47(G)(1)(a) of the FOI Act.

Application of the public interest test

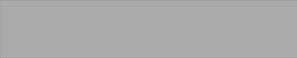
46. I acknowledge that release of the material conditionally exempted under s.47(G)(1)(a) would promote the objects of the FOI Act by facilitating and promoting public access to information held by the Department.

47. While the potential misconduct of companies contracted by the Federal Government is a matter of public importance, the allegations made against IHMS have not featured in public debate during 2016-17. I have therefore have given this factor little weight.
48. Given that the overall findings relating to allegations of fraud made against IHMS have been released, I do not consider that release of the information conditionally exempted under s.47(G)(1)(a) would promote effective oversight of public expenditure.
49. Release of the information would not allow a person to access his or her own personal information.
50. In contrast to the factors favouring release, I consider that the protection of a business's commercially sensitive information, and assessments about that business's performance, are a priority. It is in the public interest that businesses providing services to Government have a degree of protection over commercially sensitive information.
51. In summary, I consider that release of the information exempted under s.47(G)(1)(a) in the relevant documents would be contrary to the public interest. As such, I have exempted the information from release.

Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act

52. I find that the documents relevant to your request contain some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the documents released.
53. The material deleted under s.22(1)(a)(ii) comprises:
 - the names of Departmental non-Senior Executive Service staff (although position titles have been released). The intended deletion of this information was advised to you on 20 April 2016 and you did not raise any objections.

(signed electronically)


Authorised decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

3 February 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 16/04/01146
File Number: ADF2016/16821

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	22/08/2015	1-20	Departmental Document <i>Review of allegations made against International Health and Medical Services in the Guardian Australia, July 2015</i>	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47C(1) s.47E(d) s.47G(1)(a)
2.	31/08/2015	21-61	Departmental Document <i>Management Initiated Review – IHMS Contract</i>	Irrelevant material Exempted in part	s.22(1)(a)(ii) s.47C(1) s.47E(d) s.47F(1) s.47G(1)(a)
3.	04/09/2015	62-70	Departmental Document <i>Detention Assurance Review – IHMS Allegations</i>	Exempted in part	s.47C(1) s.47E(d) s.47G(1)(a)