



Attachment A – DECISION RECORD

Request Details

FOI Request FA 16/09/01005
File Number ADF2016/50721

Scope of request

1. On 9 September 2016 you requested:

Records of consultation between the Department of Immigration and the Department of Education in relation to the making of this regulation:
<https://www.legislation.gov.au/Details/F2016L00057>

Documents in scope

2. There are six documents that fall within the scope of your request, consisting of three emails with attachments (Attachment B refers).

Authority to make decision

3. I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (FOI Act) to make decisions in respect of requests to access documents or to amend or annotate Departmental records.

Information considered

4. In reaching my decision, I have considered the following:
 - the terms of your request;
 - the FOI Act;
 - the Australian Information Commissioner's guidelines relating to access to documents held by government;
 - Departmental documents, identified in the Schedule of Documents; and
 - consultation with the relevant Departmental business areas.

Reasons for decision

5. 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.
6. 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 reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).

7. 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.

Deletion of exempt material under s.22(1)(a)(i) of the FOI Act

8. I have decided the documents you requested are partially exempt from release on the following basis.

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

9. 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.
10. Documents 4-6 contain details of discussions held between the then Department of Immigration and Citizenship / Department of Immigration and Border Protection (Department), Department of Education and Training (DET), Australian Skills Quality Authority (ASQA), and Tertiary Education Quality and Standards Agency (TEQSA). These discussions related to regulatory concerns about education providers who were being considered for inclusion in Streamlined Visa Processing (SVP).
11. The discussions were held in confidence, and represented cross-agency collaboration for the purpose of enabling each agency to properly and effectively fulfil its function in relation to SVP.
12. By releasing the concerns raised by the regulators in these discussions, it would reduce the willingness of partner agencies to engage in collaborative ventures with the Department. This would undermine the effectiveness of any collaborative programs in which the Department leads or participates.
13. On this basis, I am satisfied that information contained in the documents could reasonably be expected to adversely affect the Department's operations in respect of undertaking collaborative activities between agencies. I find this adverse effect to be serious and not insubstantial. Therefore, I am satisfied that the material in issue is conditionally exempt under s.47E(d) of the Act.

Application of the 'public interest' test

14. Although I have found that the information contained in the document you requested is conditionally exempt from release under s.47E(d), 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.
15. The factors favouring access to information are provided at s.11B of the FOI Act:

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.*

16. I acknowledge that release of the document without the exemptions made under s.47E(d) would promote the objects of the FOI Act, through facilitating and promoting public access to information.
17. 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.
18. In contrast, I consider that the ability of the Department to confidentially discuss integrity concerns with partner agencies to be strongly in the public interest.
19. 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(1) – Personal privacy

20. 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 document contains 'personal information'

21. I am satisfied that the document to which you have sought access contains 'personal information', being the names and contact details of employees of Australian Government agencies other than the Department.

Disclosure would involve the 'unreasonable disclosure of personal information'

22. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.
23. 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.
24. The personal information in the document is not well known, nor is the association of these individuals with the SVP program public knowledge.
25. I have considered that each person identified for this reason is a public servant fulfilling their regular duties; however, I consider that the title and agency of each person is sufficient to identify the duties that this person is undertaking within these documents. As such, I consider that disclosure of the personal information in the document would be unnecessary and unreasonable.

Application of the 'public interest' test

26. I am satisfied that the release of the information would promote the objects of the FOI Act as it would provide access to information held by Government.
27. I do not consider release of the exempted information would be of interest to the broader public, promote effective oversight of public expenditure, or allow a person to access his or her own personal information.
28. I consider that it is in the broader public interest for public servants to be able to undertake their regular assigned duties without fear of being publicly identified.
29. On balance, I consider that the public interest factors against release of the exempted information outweigh the public interest factors for release of the information. I therefore partially exempt the document from release under s.47F(1) of the FOI Act.

Section 47G(1) – Business information

30. Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.
31. I consider that parts of the document relevant to your request contain information concerning the business, commercial or financial affairs of an organization. The information consists of business and trade names of private education providers.
32. In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:
 - a) The extent to which the information is well known;
 - b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
 - c) The availability of the information from publicly accessible sources; and
 - d) Any other matters that the Department considers relevant.
33. The material that has been exempted is a discussion of regulatory concerns about education providers; I note that many of the issues raised were ultimately dismissed by the regulator. The information contained within this document is not in the public domain and therefore cannot be said to be well known. If the names of the education providers discussed were made public, then this would reasonably be expected to damage the reputation of these agencies, and therefore diminish their ability to recruit students.
34. I am therefore satisfied that the disclosure of this information would, or could reasonably be expected to, unreasonably affect those organisations in respect of their lawful business, commercial or financial affairs. As such, I have decided that the parts of the document relevant to your request are conditionally exempt under section 47G of the FOI Act.

Application of the 'public interest' test

35. I am satisfied that the release of the information would promote the objects of the FOI Act as it would provide access to information held by Government.

36. I do not consider release of the exempted information would be of interest to the broader public, promote effective oversight of public expenditure, or allow a person to access his or her own personal information.
37. I consider that it is in the broader public interest for Australian Government agencies to be able to engage with companies in the private sector, but also to maintain the integrity of their programs without jeopardising their relationships with these business partners.
38. On balance, I consider that the public interest factors against release of the exempted information outweigh the public interest factors for release of the information. I therefore partially exempt the document from release under s.47G(1) of the FOI Act.

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

39. I find that some of the documents relevant to your request contain material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the Schedule of Documents and the documents released.
40. The material deleted under s.22(1)(a)(ii) comprises names and contact details for non-SES Departmental staff. In addition, Document 1 contains the name of the person who printed the emails, and as this relates to the administration of your request (and was not a feature of the original emails), I consider that it falls outside the scope of your request.



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

23 December 2016



Attachment B – SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/09/01005
File Number ADF2016/50721

No.	Date of document	Pages	Description	Relevant legislation (FOI Act)	
1.	19 January 2016 15 January 2016	1-5	Email 1, email 2 ¹	Exempt in part Irrelevant to scope (Withheld in part)	47F(1) 47G(1)(a) 22(1)(a)(ii)
2.	10 February 2016	6	Email 3	Exempt in part Irrelevant to scope (Withheld in part)	47F(1) 22(1)(a)(ii)
3.	Undated	7-27	Guidelines for Education Provider Participation (attachment to email 2)	Released in full	
4.	9 April 2015	28-31	Minutes – SVP Assessment Panel Meeting (attachment to email 2)	Exempt in part Irrelevant to scope (Withheld in part)	47E(d) 47F(1) 47G(1)(a) 22(1)(a)(ii)
5.	Undated	32-34	List of deferred education providers (attachment to email 2)	Exempt in part	47E(d) 47G(1)(a)
6.	Undated	35-40	Assessment of deferred education providers (attachment to email 3)	Exempt in part	47E(d) 47G(1)(a)

¹ Please note that there are sections of Document 1 (pages 2-3) that are blank; this is due to a technical issue caused by converting Microsoft Outlook emails to PDF format. No information was redacted or deleted from these blank sections.

Attachment C – Extract of relevant legislation

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.

47E Public interest conditional exemptions—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 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.

Section 47G - Public interest conditional exemptions—business

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

11B - Public interest exemptions—factors

(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;

(aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

(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.