



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 16/11/00648  
File Number ADF2016/68005

#### Scope of request

*Documents between the Department and the Vietnamese government relating to the scope of their visits to the various detention centres in 2013.*

#### Authority to make decision

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

#### Information considered

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 areas.

#### 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 at **Attachment B**. Please refer to the Schedule of Documents in conjunction with the exemptions below.

#### **Section 22(1)(a): Access to edited copies with exempt or irrelevant matter deleted**

With respect to section 22(1)(a)(i) of the Act, I have deleted information where the below exemptions have been applied to the documents within the scope of your request.

#### **Section 33: National Security, Defence, or International Relations**

Section 33(a)(iii) of the Act exempts a document from release where its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

I am of the view that the information I have deleted under this exemption relates to:

- Representations made by or attributable to the Vietnamese Ministry of Public Security – Immigration Department (MPSI) on operational border security matters that are not in the public domain
- Representations made by or attributable to the MPSI with respect to their diplomatic stances on operational border security matters that are not in the public domain, and
- Representations made by or attributable to the MPSI with respect to cooperative efforts between the MPSI and the Australian Department of Immigration and Border Protection (the Department) on operational border security matters that are not in the public domain.

I am of the view that the disclosure of any of this information would and could reasonably be expected to cause damage to the international relations between the Commonwealth of Australia and the Socialist Republic of Vietnam (Vietnam), to the extent that it would:

- reveal and prejudice procedures and capabilities of particular operational border security matters
- damage the Australian Government's working relations with the MPSI with respect to operational border security matters, inadvertently damaging working relations with the Government of Vietnam more broadly, and
- diminish the confidence of the Government of Vietnam that the Department is a reliable recipient of confidential information, subsequently rendering the Vietnamese government and its agencies less willing to cooperate with the Australian government in the future.

On this basis, I am satisfied that documents which I have exempted under section 33(a)(iii) are exempted on the basis of the line of reasoning outlined above.

Section 33(b) of the Act exempts a document from release where disclosure would divulge information or matter communicated in confidence by a foreign government, an authority of a foreign government or an international organisation to the Commonwealth.

I am satisfied with respect to the deletions I have made under this exemption that the information related to communications made on a confidential basis from the Government of Vietnam, through the MPSI to the Commonwealth of Australia through the Embassy of Australia in Hanoi, Vietnam. I have turned my mind to the fact that these communications are enshrined through official diplomatic correspondence, providing a platform where sensitive issues can be discussed on a confidential basis.

On this basis, I am satisfied that documents which I have exempted under section 33(b) are exempted on the basis of the line of reasoning outlined above.

I acknowledge that non-sensitive issues in the public domain do get communicated through diplomatic correspondence, as is the case in this instance. I have not made deletions under section 33(b) in these instances.

#### **Section 47E: Certain Operations of Agencies**

Section 47E(d) of the Act conditionally exempts documents from release where disclosure would, or could, reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

With respect to the deletions I have made under this exemption, I note that the information relates directly to core operational matters that are undertaken by the Department.

I note that for this conditional exemption to apply, I must be satisfied that the disclosure of the information would have a *substantial adverse effect* on the proper and efficient conduct of the operations of the Department (emphasis added).

I am of the view that the disclosure of these documents would reveal core operational activities that the Department is currently undertaking and would place the Department at a substantial strategic disadvantage in resolving operational issues associated with these activities should interim details of these activities be disclosed in the public domain.

Furthermore, the operational activities that are referenced in these documents are associated with diplomatic stances attributable to the MPSI with respect to Australia's operational border security activities, as well as cooperative efforts between the MPSI and the Department on operational border security activities.

I am of the view that to disclose this information would:

- result in a lack of confidence that the Department will keep these communications confidential
- impact on the Department's ability to engage support from the MPSI, and
- set a precedent for other foreign states to refrain from engaging with the Department on core operational efforts.

As such, I am of the view that disclosure could reasonably be expected to substantially and adversely impact on the proper and efficient operations of the Department. On this basis, I am satisfied that documents which I have exempted under section 47E(d) are exempted on the basis of the line of reasoning outlined above.

Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. As such, I have also considered whether disclosure of the information I have deleted under this exemption would be contrary to the public interest, and have included my reasoning below.

### **Section 11A: Public Interest Test**

In relation to documents which I have decided have satisfied the statutory requirements under section 47E(d), I am required under section 11A of the Act to consider whether access to the conditionally exempt information would be contrary to the public interest. In considering this, I must be satisfied that access to the conditionally exempt document would be, *on balance*, contrary to the public interest (emphasis added).

In my application of the public interest test, I have noted the objects of the Act and the importance of the other factors outlined under section 11B(3) of the Act, being whether access to the document would do any of the following:

- Promote the objects of this Act (including all the matters set out in sections 3 and 3A)
- Inform debate on a matter of public importance
- Promote effective oversight of public expenditure
- Allow a person to access his or her own personal information.

Having regard to the above factors, I have provided you with access to documents where the disclosure of the documents would promote the fundamental objects of the Act, where the documents promote the effective oversight of public expenditure, and where the documents

have the potential to inform debate on a matter of public importance. However, I have also considered the fact that the documents do not contain personal information about you.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents.

Relevantly, I am of the view that the disclosure of information that has been deleted pursuant to the exemption under section 47E(d) of the Act, would reasonably be expected to prejudice the proper and efficient discharge of the Department's law enforcement and operational border security activities. Balancing the factors for and against disclosure I am satisfied that it is not in the public interest to be releasing such information.

I have also considered the provisions under section 11B(4) outlining the factors that are irrelevant to my decision. These are as follows:

- Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- Access to the document could result in any person misinterpreting or misunderstanding the document
- 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
- Access to the document could result in confusion or unnecessary debate.

I have not taken into account any of these factors in my decision.

Upon balancing all of the above relevant public interest criterion, I am satisfied and have decided that the disclosure of the conditionally exempt documents is not in the public interest and therefore exempt from disclosure under the Act.

## Legislation

I have attached an extract of the exemption provisions of the FOI Act and the public interest test for your information at **Attachment C**.



Authorised Decision Maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

23 January 2017



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 16/11/00648  
File Number ADF2016/68005

No.	Date of document	No. of pages	Description	Decision on release	
1.	Undated	2	MPSI Note 1345-XNC	Exempt in full	s 33(b)
2.	28/03/2016	3	Note 632-2013	Release in part	s 33(a)(iii), s 33(b), s 47E(d)
3.	18/07/2016	2	Letter from Australian Ambassador to VM MPSI	Exempt in full	s 33(b)
4.	30/07/2013	1	MPSI Note 1768-XNC	Exempt in full	s 33(b)
5.	16/08/2013	1	MPSI Note 1998-XNC	Exempt in full	s 33(b)
6.	20/08/2013	1	Note 835-2013	Release in part	s 33(a)(iii), s 33(b), s 47E(d)

## 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.

### 33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the Commonwealth; or

- b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

**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).