



16/5/2017

In reply please quote:

FOI Request: FA 17/03/01116

File Number: ADF2017/34675

Dear [REDACTED]

Freedom of Information – Decision on Access

I refer to your email dated 29 March 2017 in which you requested access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

1 Scope of Request

You have requested access to the following documents held by the Department:

'The following response was received to a media inquiry earlier this year relating to the assessment of LGBT+ asylum seekers.

"Training for decision makers includes the assessment of claims for protection on the basis of sexual orientation, gender identity or intersex status and has a strong focus on procedural fairness, including avoidance of bias or apprehension of bias, as well as sensitive interview and case management techniques."

Can you please provide documents related to the type of training mentioned above, either guidance provided directly to trainees or materials used by trainers. Please also provide any documents previously used for such training. Please include the dates during which the training materials were/are current.

For the avoidance of doubt - I'm seeking all materials, documents and records of departmental training materials and/or guidance to staff or others which relate to the assessment of both:

- (A) Whether an asylum seeker is genuinely LGBT+ ; and/or*
- (B) Whether an asylum seeker has a well-founded fear of persecution based on their LGBT+ status.'*

This letter is to notify you of the Department's decision on access to the documents subject to your request.

2 Charges



3 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

4 Relevant material

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

5 Documents in scope of request

The Department has identified eight documents that fall within the scope of your request. These documents were in the possession of Department on 29 March 2017 when your FOI request was received.

A schedule of these documents is at **ATTACHMENT A** for your reference.

6 Decision on access

The decision in relation to the documents in the possession of the Department which come within the scope of your request is as follows:

- Release one document in full;
- Release three documents in part with deletions, and
- Exempt four documents in full from disclosure.

The reasons for the decision are set out below.

7 Reasons for Decision

I am satisfied that I have been provided with all the documents that are relevant to your request. The schedule of the eight documents that fall within the scope of your request at **ATTACHMENT A** sets out the decision on access and, where appropriate, refers to various sections of the FOI Act. My reasoning in relation to the application of each section to particular documents is set out below.

7.1 Section 22 of the FOI Act – irrelevant to request

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 31 March 2017, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that parts of document would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

7.2 Section 47 of the FOI Act – Documents disclosing commercially valuable information

Section 47 provides that a document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

In determining whether the information within the documents is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I am satisfied that documents 5-8 contain business information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

These four documents consist of proprietary training programme material of a third party organisation (the **organisation concerned**). This training programme was delivered to Departmental officers in 2016 and the information within the documents contains the Intellectual Property of the organisation concerned.

The organisation concerned has provided submissions to the Department that the information contained within the documents is commercially valuable to it. The organisation concerned has not released this material to the general public, nor does it intend to do so. The material is subject to copyright of the jurisdiction relevant to the organisation concerned.

Any dissemination of the training material would cause financial harm to the organisation concerned, which trains refugee professionals worldwide, with a significant portion of their income being derived from this activity. Disclosure of this information under the provisions of the FOI Act would result in irreversible harm to the organisation's ability to continue delivery of this programme in a proprietary manner. As a result the commercial value in this information to the organisation concerned would be destroyed or diminished in the event that it is disclosed.

Having considered the organisation's submissions, I am satisfied that the information contained within the document is valuable for the purpose of carrying on the commercial activities in which that organisation is engaged. The information is relevant to the profitability or viability of its continuing business operations. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity, thus destroying its commercial value.

I have therefore decided that documents 5-8 are exempt from disclosure under section 47 of the FOI Act.

8 Section 47E of the FOI Act – Operations of Agencies

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if 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.

I consider that the disclosure of documents 5-8 and parts of documents 2 and 4 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

The information contained within these documents is used by the Department to learn how to accurately assess LGBTI-based asylum claims. Disclosing this information publicly would, or could reasonably be expected to, change the outcomes of countless interviews with asylum seekers, as it would provide these asylum applicants with the questions used to assess their sexual orientation and gender identity, and as a result, the veracity of their claims. If the material was publicly available, any individual would be able to draft a claim conforming with the criteria set out in these documents.

This would impact the integrity of the assessment of claims by asylum seekers. The harm that would, or could reasonably be expected to arise from the disclosure of this information would extend beyond this Department and the Australian government to other governments and international organisations that assess asylum claims. As such, any disclosure resulting in the prejudice of the integrity and effectiveness of the methods and procedures involved in assessing asylum claims would result in the need for this Department, and potentially other agencies and organisations, to change those methods and procedures to avoid jeopardising their future effectiveness.

Documents 2 and 4 also contain internal Department email addresses. This information would disclose direct contact details for operational areas within this Department that are not otherwise publicly available. I consider that the disclosure of this information could reasonably be expected to result in potential vexatious communications and general public inquiries being directed to these contact points which these business areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these internal business contact details. I am of the view that the diversion of their resources that would be required to manage potentially vexatious communications and general inquiries into the Department could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of these business areas and consequently the operations of the Department.

Accordingly, I have decided that documents 5-8 and parts of documents 2 and 4 are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

8.1 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in document 3 would disclose personal information relating to third parties. Whilst the information in isolation does not necessarily enable a general member of the public to identify the individual, I consider that it is sufficient to enable a person to be identified by those familiar with the circumstances of these particular individuals.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to training materials and/or guidance which relate to the assessment of specific asylum claims rather than information which wholly relates to private individuals.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

8.2 The public interest – section 11A of the FOI Act

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

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

- I consider that the disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice law enforcement functions and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its functions in relation to border protection matters is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- (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.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

9 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

10 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days. Applications for review should be sent to:

Freedom of Information Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

OR

By email to: foi.reviews@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

11 Making a Complaint

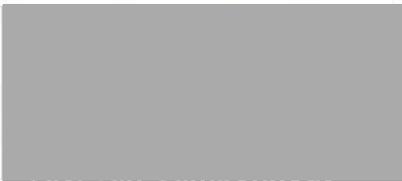
You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:
Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

12 Contact

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@border.gov.au.



**Authorised Decision Maker
Onshore Protection Branch
Refugee and Humanitarian Visa Management Division
Department of Immigration and Border Protection**

ATTACHMENT A

Schedule of Documents

FOI request: FA 17/03/01116
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No.	Date of document	No. of pages	Description	Decision on release	
1.	Undated	23	Annexure 5: Assessing claims relates to sexual orientation and gender identity	Release in full	
2.	2016	28	LGBTI Training – Onshore Protection	Release in part	s47E(d)
3.	Undated	5	LGBTI Case Studies	Release in part	s47F
4.	16/12/2016	23	Sexual orientation and Gender Identity Facilitator guide	Release in part	s22(1)(a)(ii) s47E(d)
5.	April 2016	21	Sexual and Gender Minorities: Module 1: Sensitization and Identification	Exempt in full	s47
6.	April 2016	22	Module 2: Protection SGM Refugees	Exempt in full	s47
7.	April 2016	26	Module 3: Working with SGM Refugees	Exempt in full	s47
8.	April 2016	29	Module 4: Assessing Credibility in SOGI/GE-based claims	Exempt in full	s47