



5 September 2017

BY EMAIL: [REDACTED]

In reply please quote:

FOI Request: FA 17/07/00884

File Number: ADF2017/79731

Dear [REDACTED]

Freedom of Information – Decision on Access

I refer to your email dated 25 July 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:

Agreement between Refugee and Humanitarian Visa Management Division and TPVA branch regarding streamlined re-assessment approach, with file reference: ADD2017/1202406., and

Policy document regarding no changes to previous protection recommendations, with file reference: ADD2016/946483.

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

2 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.

3 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
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Documents in scope of request

The Department has identified two documents that fall within the scope of your request. These documents were in the possession of Department on 25 July 2017 when your FOI request was received.

5 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 part with deletions
- Exempt one document in full from disclosure.

6 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 two 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 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.

Disclosure of the information in Document 2 would allow parties to circumvent standard methods of reassessment of protection obligations for *Illegal maritime arrivals* (IMA). If this information were to be disclosed, IMAs could reasonably be expected to avoid normal procedures for reassessment, in order to be admitted to the *fast-track* streamlined reassessment cohort for reassessment. This would have a substantial effect on both the operations and resources of the Department in relation to IMA processing.

In addition, some information marked s47E(d) in Document 1 consists of operational email addresses used by both this Department and its partner agencies. These email addresses are not otherwise publicly available and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries, which these operational areas are not resourced to manage. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

Accordingly, I have decided that the documents 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 at paragraph 7.2 – *The public interest*.

7.1 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 s4 of the FOI Act and s6 of the *Privacy Act 1988*).

I consider that disclosure of information in Document 2 would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

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 individual(s) concerned is/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 *streamlined re-assessment approach* and *Policy document regarding no changes to previous protection*, rather than information which wholly relates to other 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 at paragraph 7.2 – *The public interest*.

7.2 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 have the character of public importance and that there may be broad public interest in the documents.
- 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 ability of the Department to maintain its methods, policies and procedures in relation to IMA processing, to be in the public interest. This is a factor which I consider strongly weighs against disclosure.
- 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.
- 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.

8 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.

9 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>.

10 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.

11 Contact

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

FOI Officer | Freedom of Information Section
FOI, Privacy and Records Management Branch
Corporate Services Division
Department of Immigration and Border Protection

ATTACHMENT A

Schedule of Documents

FOI request: FA 17/07/00884

File Number: ADF2017/79731

	Date of document	No. of pages	Description	Decision on release	
1.	July 2016	5	Protection obligations reassessments	Partial release	s.47E(d)
2.	10 May 2017	7	Minute to First Assistant Secretary – Refugee and Humanitarian Visa Management Division – Streamlined reassessment approach	Exempt in full	s.47E(d) s.47F