



28 March 2017

**In reply please quote:**

FOI Request: FA 17/02/00475  
File Number: ADF2017/20585

Dear [REDACTED]

**Freedom of Information request – decision on access**

I refer to your email dated 7 February 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:

*'Structure chart of EL2 and EL1 officers in the Visa and Citizenship Services group and the Policy group, including the Regional centres of NSW, Central, WA, VIC/TAS.*

*If structure charts are not in existence, the names and position titles of EL2 and EL1 officers in the Immigration and Citizenship policy division and the Visa and Citizenship Management division.'*

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

#### **4 Documents in scope of request**

I have consulted with both the Visa and Citizenship Management Division and the Policy Group, and have been advised that neither holds a structure chart that sets out both EL2 and EL1 officers in their respective work groups.

As a result, I consulted with the Workforce Planning Section of the People Division, and that Section has extracted data relevant to part 2 of your request from Departmental computer systems in accordance with section 17 of the FOI Act. The data produced in this document existed in the possession of the Department on 7 February 2017 when your FOI request was received.

The Department has therefore identified one document as falling within the scope of your request, being a list of staff members in EL1 and EL2 positions in the Immigration and Citizenship Policy Division and Visa and Citizenship Management Division.

#### **5 Decision on access**

The decision in relation to the document in the possession of the Department which come within the scope of your request is to release one document in part with deletions.

The reasons for the decision are set out below.

#### **6 Reasons for Decision**

I am satisfied that I have been provided with all the documents that are relevant to your request. My reasoning in relation to the application of each section of the FOI Act is set out below.

##### **6.1 Section 47E of the FOI Act – Operations of Agencies**

**Section 47E(c)** 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 management or assessment of personnel by the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. The Department operates in a position of trust within the border environment and as such the highest standard of conduct must be encouraged and maintained.

The Department's Professional Standards Framework promotes the highest of standards of professional conduct expected of the Department's workforce. Contained within the professional standards framework, is the integrity framework which includes measures designed to protect our workforce from criminal influence and to mitigate the potential for corruption risk. Any adverse effect to the effectiveness of the Department's ability to manage its personnel within its integrity framework exposes the Department to potential integrity risk which would result in a substantial adverse effect on the operations of the Department.

At times, the policy space that this Department operates in can be highly controversial and divisive and in some circles, an unpopular aspect of government policy. The Department also operates in a highly sensitive operational environment. As such, affording protection to its staff is a high priority for the Department.

Staff names and direct contact details are not published outside the Department in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

The disclosure of staff names and direct contact details outside the Department could expose those members of staff to unsolicited approaches by individuals with criminal affiliations and may result in serious risks to the security and integrity of the Department's lawful activities. There have also been documented cases of members of staff of the Department being harassed and receiving personal threats to their safety.

I am therefore satisfied that the likelihood of a threat from unknown individuals to members of staff is based not based on intangible or hypothetical threats.

The Department has a primary duty of care to ensure, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). The Department must ensure, as far as is reasonably practicable, that the health and safety of other persons is also not put at risk from work carried out as part of the conduct of the Department.

I am of the view that the disclosure of the names of officers contained within the documents could impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This this would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department.

**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.

The Department's Immigration and Citizenship Policy Division provides policy advice on national impacts of immigration, citizenship and people mobility. The staff that work within this Division do not have regular contact with members of the public, and as such, their information is not provided externally as a matter of course.

The Department's Visa and Citizenship Management Division delivers the citizenship, family, skilled and temporary visa programmes for the Department. This includes the processing of certain visa applications. The Department's *Client Correspondence Style Guide* provides staff with guidance as to the information that they should include in their signature blocks for correspondence with members of the public, including decisions on the grant of visas. Generally, the signature block includes the staff member's first name only and their position number.

The Department has established channels of communication for members of the general public. These channels include:

- the Department's website at <http://www.border.gov.au/about/contact>;
- a web form for general inquiries at <http://www.border.gov.au/about/contact/make-enquiry>;
- a business phone number of 131 881;
- details of offices located both within Australia and outside Australia where individuals can visit us in person;
- the ability of individuals to be able to check their visa status and details online using the Department's Visa Entitlement Verification Online (VEVO) system. This is a free web service available anywhere, anytime.

By receiving enquiries from members of the public through these established channels, the Department is able to effectively triage and manage enquiries from members of the public, including those inquiries received outside of business hours. The disclosure of the full names of staff members could result in individuals circumventing the established processes designed to accommodate inquiries received by the Department thereby resulting in the Department's customer service levels being adversely affected.

I have considered paragraph 3.38 of the Guidelines published by the Australian Information Commissioner and I specifically note:

*'Nothing in the FOI Act limits what an applicant may do with the released documents .... A decision to give a person access should therefore be made in the knowledge that the applicant may share the content of the documents with others or publish them to a wider audience.'*

In addition, the disclosure log provisions require general publication within 10 working days of information being released to individual applicants, subject to limited exceptions for personal, business and other information

As such, release of the documents under the FOI Act is a disclosure to the world at large. In the event that the information contained within these documents is published broadly, the ability for the Department to manage its relationships with the general public could be adversely affected.

If officers full names were to be publicly released this could result in them being directly contactable by external parties, now or any time in the future, which could result in those staff members receiving vexatious communications and public inquiries which they are not resourced to manage.. Any diversion of an individual officer's resources from their business as usual to manage such unsolicited contact with members of the public could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

In addition, I am of the view that any precedent of publication of staff names could have an adverse effect on the Department's ability to recruit future staff, if it were understood that the Department was expecting employees to be put in a position where either they or their families are exposed to any type of risk that resulted from such public disclosure of their personal details.

Having considered the above, I am satisfied that the disclosure of the parts of documents marked 's47E(c)' and 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the Department's management of personnel and, as a result, the proper and efficient conduct of the operations of the Department.

Accordingly, I have decided that parts of the documents are conditionally exempt under both section 47E(c) and 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.

## **6.2 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 's 47F' in the documents would disclose personal information. The information within the documents would reasonably identify a person through the disclosure of their names and would identify them as being a member of staff of this Department, and thus their 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 s47F(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 names of the officers included in the documents are not well known outside the Department and would only generally be known to other officers working within the Department. As detailed above, these staff members do not disclose their full names to members of the public as part of their normal duties.

As this information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the Department. This information is not available from publicly accessible sources.

The Department has a policy within its integrity framework that officers must not identify themselves in, for example, social media, as being officers of the Department. To disclose these staff members as employees of the Department would contradict the Department's own policies in relation to the disclosure of their employment status with the Department.

Given the amount of information that is available today from the internet and social networking sites, a member of staff can be located and identified through the disclosure of their name. This would then provide an individual with access to that staff member's personal profiles, photographs and details of their families. This demonstrates how easy it would be for an unscrupulous person to make contact with staff members and their families outside their normal working environment.

There is therefore a protective element to my decision to exempt this information to ensure that persons with a will and means to locate, harass or threaten the Department's staff are unable to do so, and to prevent such individuals from gaining access to more sensitive personal information about these officers beyond just their names and employment circumstances.

I note that the Information Commissioner Guidelines, at paragraph 6.153 states that:

*"Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.*

The information contained within these documents has been generated from the Department's computer systems for the purpose of satisfying your FOI request. It does not relate to any specific decisions made by these officers, and does not demonstrate anything more than the position that they occupy with the Department. The information I have marked 's47F' in the documents is not publicly available or on the Department's website. For the reasons I have discussed above regarding the safety and protection of the Department's staff, I consider that special circumstances exist in relation to the disclosure of the information within these documents.

The Information Commissioner's Guidelines, at paragraph 6.156 state that:

*A document may be exempt for another reason, for example, where disclosure would, or could reasonably be expected to, endanger the life or physical safety of any person (section 37(1)(c)).*

I have not considered the application of the exemption under section 37(1)(c) to these documents, but note that given the protective element to my decision, it would be open to the Department to consider the application of this exemption to the staff member's full names contained within these documents. As noted above, there have been previous incidents where Departmental staff have been targeted and harassed as a result of their personal details being published following release of documents under the FOI Act. As such I consider that there would be 'special circumstances' which exist that would facilitate a reasonable application of this exemption.

Paragraph 6.156 goes on to state that:

*Where an individual has a propensity to pursue matters obsessively and there is no need for them to contact a particular public servant in the future, disclosure of the public servant's name may be unreasonable*

Given the established channels of communication that the Department has in place, I do not consider that there is a need for the names requested by you to be released. I note however that the position titles have been released to you.

I am satisfied that the disclosure of the staff names and direct contact details 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.

### **6.3 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 of the FOI Act could reasonably be expected to prejudice management functions relating to the Department's personnel 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 protecting the borders of Australia is not compromised or prejudiced in any way. Any prejudice to the ability of the Department to protect Australia's borders would have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.
- Whilst it may be regarded that there is a public interest in the disclosure of public servants names where those public servants are making decisions affecting members of the public, I consider that it is not in the public interest for the Department's functions to be prejudiced to the extent that it comprises the safety, integrity and well-being of its staff. I therefore consider that, on balance, the disclosure of this information would be contrary to the public interest, and 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 the right to privacy for a number of individuals. As I have indicated above, there is a protective element to my decision. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy, including staff members and their families. I do not consider there is a public interest that would favour the disclosure of personal information that may result in the identification, location and potential threat and harassment to any member of the public, but particularly entrusted members of staff of this Department. 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:

- 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;*

- (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.

## **7 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.

## **8 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](mailto: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>.

## **9 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](mailto: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.

## **10 Contact**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au).



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