



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/02/00562
File Number ADF2017/21215

Original scope of request

1. On 10 February 2017 you requested:

Statistics for the number of boats turned around for the 2016 calendar year, and the estimated number of people on these boats.

Documents in scope

2. Section 17 of the FOI Act provides that where an agency can produce a written document containing the information in discrete form by the use of a computer the agency shall deal with the request as if it were a request for access to a written document so produced.
3. The Department has created one document that is relevant to the scope of your request. This document is attached as Attachment B – Documents released.

Authority to make decision

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

Information considered

5. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - Consultations with relevant business areas; and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Decision

6. My decision is to release the document to you, exempt in part, for the following reasons under the FOI Act.

Section 33 - Documents affecting national security, defence or international relations

National Security

7. Section 33(a)(i) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the security of the Commonwealth.
8. For the reasons set out below, I consider that there are real and substantial grounds for expecting that the disclosure of the part of the document exempted under section 33(a)(i) would cause damage to the security of the Commonwealth.

Security

9. 'Security' is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time.^[1] 'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as follows

(5) *Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:*

- (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and ...*

10. I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant.^[2] That Act defines 'security' as:

(a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*

- (i) *Espionage*
- (ii) *Sabotage*
- (iii) *Politically motivated violence*
- (iv) *Promotion of communal violence*
- (v) *Attacks on Australia's defence system; or*
- (vi) *Acts of foreign interference;*

Whether directed from, or committed within, Australia or not; and

(aa) *the protection of Australia's territorial and border integrity from serious threats; and*

(b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

11. Paragraph (aa) is particularly on point. It was inserted by the *Anti-People Smuggling and Other Measures Act 2010* (Cth) (Schedule 2). The Explanatory Memorandum for the *Anti-People Smuggling and Other Measures Bill 2010* (Cth), states that 'serious threats to Australia's territorial and border integrity' include 'those posed by people smuggling activities' (at 2-3).

^[1] *Church of Scientology v Woodward* (1982) 154 CLR 25 at [19].

^[2] See *Staats and National Archives of Australia* [2010] AATA 531 at [99].

Operation Sovereign Borders

12. The Department is part of a whole-of-government response to border protection issues that has been established through Operation Sovereign Borders (OSB). OSB is a military-led, border security initiative supported and assisted by a wide range of federal government agencies. The OSB Joint Agency Task Force (JATF) has been established to ensure a whole-of-government effort aimed at combating maritime people smuggling and protecting Australia's borders.
13. OSB was established on 18 September 2013 and has successfully reduced the number of illegal maritime ventures to Australia and prevented loss of life at sea. Australia remains committed to ending the criminal activity of people smuggling. It aims to ensure that Australia has effective control of the circumstances in which people enter Australia.
14. The JATF is supported by two operational task groups:
 - Disruption and Deterrence Task Group—led by the Australian Federal Police; and
 - Detection, Interception and Transfer Task Group—led by this Department, which includes the Australian Border Force (ABF) and MBC.
15. For a document (or part of a document) to be exempt under section 33(a)(i), I must be satisfied that, on the balance of probabilities, disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.
16. I consider that the disclosure of the information contained within the document could cause damage to the security of the Commonwealth by compromising operational functions of this Department and its border protection partners. I consider the particular damage to the security of the Commonwealth to be as follows:
 - a) Disclosure will result in major damage to the Commonwealth's bilateral relationship with key international partners in the effort to combat people smuggling.
 - b) The disclosure will likely provide people smuggling operators with official government information which they could use to manipulate and convince any potential illegal immigrants to embark on voyages to Australia.

International relations

17. Section 33(a)(iii) of the FOI Act permits exemption of a document if the disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth
18. The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.
19. I consider that the disclosure of the information contained within the document could cause damage to the international relations of the Commonwealth by compromising the Commonwealth's relationship with its regional partners. I consider the particular damage to the international relations of the Commonwealth to be as follows:
 - a) As indicated above, the Commonwealth's bilateral relationship with key international partners is an integral part of Operation Sovereign Borders and the regional effort to combat people smuggling.

- b) The disclosure of the exempt information would impact on the Commonwealth's ability to work collaboratively and collegiately with other governments to support counter people smuggling efforts in the region.
- c) The disclosure of the exempt information would lead to irreparable damage to the Commonwealth's bilateral relationships with regional governments across the broader Commonwealth whole-of-government approach to anti-people smuggling efforts in the region.

20. I consider that there is a strong public interest in maintaining the ability of Australia to work with its international partners in its whole-of-government effort aimed at combating maritime people smuggling and protecting Australia's borders.

21. I am satisfied that the information marked 's33(a)(i)' and 's33(a)(iii)' in the document is exempt from disclosure under s.33(a)(i) and s.33(a)(iii) of the FOI Act.



Authorised decision maker
Department of Immigration and Border Protection
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12 April 2017