



Australian Government

Department of Immigration and Border Protection

29 May 2015

In reply please quote:

FOI Request FA 15/04/01381

File Number ADF2015/16749

Mr Iain Murray
Right to Know

Sent by email to: foi+request-1052-a99baebb@righttoknow.org.au

Dear Mr Murray

Freedom of Information request – decision on request

This letter refers to your request received on 24 April 2015 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

Incident Detail Report 1-5A5X8L from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.

Decision

My decision is to release, in part, the document within the scope of your request. Please see the attached Decision Record and Schedule of Documents. Read together these form my reasons for decision as required under s.26 of the FOI Act.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department of my 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 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
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@immi.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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

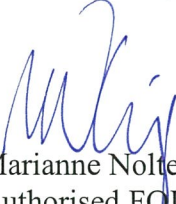
How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Marianne Nolte-Crimp
Authorised FOI Decision Maker
Freedom of Information Section
Department of Immigration and Border Protection
Email foi@immi.gov.au

Attachments

- ✓ Attachment A - Decision Record
- ✓ Attachment B - Schedule of Documents
- ✓ Attachment C – Extract of relevant legislation
- ✓ Attachment D - Documents released



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/04/01381

File Number ADF2015/16749

Scope of request

Incident Detail Report 1-5A5X8L from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.

Documents in scope

Departmental file - *Incident Detail Report* - containing 2 folios.

Authority to make decision

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

In reaching my decision, I have considered the following:

- the *Freedom of Information Act 1982*;
- Departmental document (identified above); and
- the Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

I have considered the document within the scope of your request and have applied an exemption, in part, to the document, as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of exempt or irrelevant material under s.22 of the Act

Section 22(2) of the Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the Act).

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Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the Act.

Deletion of irrelevant material as applied to your FOI request

The document contains information which is considered irrelevant to your request, i.e. the names of Departmental staff members. This information has been deleted pursuant to s.22(1)(a)(ii) of the Act.

Conditionally exempt documents

The *Incident Detail Report* falls under a 'conditional' exemption' in the FOI Act. I will explain what a 'conditionally exempt' document is before discussing the exemption I have applied.

The FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

The public interest test

Factors weighing in favour of release

In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the information would:

- (a) *promote the objects of the Act; or*
- (b) *inform debate on a matter of public importance; or*
- (c) *promote effective oversight of public expenditure; or*
- (d) *allow a person to access his or her personal information.*

The objects of the FOI Act, set out in s.3(1), are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities.

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines (IC Guidelines) that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the FOI Act).

The Information Commissioner has since issued Guidelines that contain a **non-exhaustive** list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the IC Guidelines).

The elements that weigh against disclosure are:

Whether disclosure of the information could reasonably be expected to:

- (a) prejudice the protection of an individual's right to privacy, including where:*
 - i. the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
 - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) prejudice security, law enforcement, public health or public safety*
- (d) impede the administration of justice generally, including procedural fairness*
- (e) impede the administration of justice for an individual*
- (f) impede the protection of the environment*
- (g) impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) prejudice an agency's ability to obtain confidential information*
- (i) prejudice an agency's ability to obtain similar information in the future*
- (j) prejudice the competitive commercial activities of an agency*
- (k) harm the interests of an individual or group of individuals*
- (l) prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) prejudice the management function of an agency*
- (n) prejudice the effectiveness of testing or auditing procedures*

I will now consider each conditional exemption that I have applied in my decision.

Conditional Exemptions as applied to your request

Public interest conditional exemption- personal information- s.47F(1)

A document is 'conditionally exempt' under s.47F(1) of the FOI Act if its release would involve the '*unreasonable disclosure of personal information about any person, including a deceased person*'.

For information or documents to be exempt under this provision, the information in the documents must meet the definition of 'personal information' in s.4(1) of the FOI Act and I must be satisfied that the release of the information is 'unreasonable'.

The test of unreasonableness implies a need to balance the public interest in disclosure of government-held information and private interests of individuals.

Personal Information

I am satisfied that the information contained in the documents which I am exempting is the 'personal information' of a third party. The 'personal information' includes the name, date of birth and other personal identifying information of that third party.

Unreasonable disclosure

Section 47F(2) of the FOI Act sets out the factors that may be considered when determining whether release is 'unreasonable'. They are:

- 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 within the document;
- the availability of the information from publically accessible sources; and
- any other matters that the Department considers relevant.

I have considered each of these factors below.

The extent to which the information is well known

The third party's personal information is not well known and would only be known to a limited group of officers with a business need-to-know. The information would not be known outside the Department. On balance, I believe that this factor weighs against the release being reasonable.

Whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document

The third party's personal information, in the context of the incident report, is only known to those with a business need-to-know. Therefore, the third party concerned is not generally known to be associated with the matters discussed in the document. On balance, I believe that this factor against the release being reasonable

The availability of the information from publically accessible sources

This personal information is not available from publically available sources and does not appear to be in the public forum. The information is contained in an internal Departmental document, created for an administrative process. On balance, I believe that this factor weighs against the release being reasonable.

Any other matters that the Department considers relevant

I have considered the following factors:

- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- No purpose would be achieved by releasing the third party's personal information. This weighs against the release being reasonable.

- The degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government. This weighs against the release being reasonable.
- The current relevance of the information. This weighs against the release being reasonable.

On balance I am satisfied that the release of the third party's personal information would be 'unreasonable' in the context of the request.

Therefore, I am satisfied that the conditional exemption in s.47F(1) applies to the document. I must now consider the application of the public interest test in s.11B of the FOI Act to determine whether the release of the information in the documents would be 'contrary to the public interest'.

Factors weighing in favour of release

I am satisfied that the release of the document would promote the objects of the FOI Act as it would provide access to information held by Government and that this factor weighs in favour of the release not being 'contrary to the public interest'.

However, I am satisfied that the release of the third party's personal information would not have any bearing on or relevance to any matter of public debate. Therefore this factor does not weigh in favour of release.

I am also satisfied that the release of the personal information is irrelevant to the effective oversight of public expenditure. Therefore, this factor does not weigh in favour of release.

Finally, the release of the documents containing the third party's personal information would not allow you to access your own information. This factor does not weigh in favour of release.

Therefore, only the first public interest factor weighs in favour of release.

Factors weighing against release

As set out above, the Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act.

I consider that these factors are relevant to the personal information in the identified document:

- disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy;
- it is a core Government concern to maintain the integrity of the information it holds and to maintain an individual's privacy;
- no purpose would be achieved/served by releasing the individual's personal information;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government; and
- the current relevance of the information.

On balance, I am satisfied that release of the third party's personal information would be 'contrary to the public interest' and is therefore exempt under s.47F(1) of the FOI Act. The factor against disclosure relating to the protection of an individual's right to privacy was given the most weight. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding this information.



Marianne Nolte-Crimp
Authorised FOI Decision Maker
Freedom of Information Section
Department of Immigration and Border Protection
Email foi@immi.gov.au

29 May 2015



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/04/01381

File Number ADF2015/16749

Departmental File: *Incident Detail Report*

Folio	Description	Decision	Legislation
1-2	Incident Detail Report	Irrelevant to scope	s.22(1)(a)(ii)
		Exempt in part	s.47F(1)

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.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) 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;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
 - (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of ***qualified person*** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
 - (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
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(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).