



28 March 2024

Lynne

BY EMAIL: foi+request-10912-46fda614@righttoknow.org.au

In reply please quote:

FOI Request: FA 23/11/01408

File Number: FA23/11/01408

Dear Lynne,

Freedom of Information (FOI) request – Revised decision under section 55G of FOI Act

On 26 November 2023, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

On 8 February 2024, the Office of the Australian Information Commissioner (OAIC) issued a notice under section 54z of the FOI Act in which it notified the Department that the Information Commissioner would review the deemed access refusal decision of the Department.

Following the commencement of the Information Commissioner review, the Department has now made a revised decision on your request under section 55G of the FOI Act. The purpose of this letter is to provide you with the Department's revised decision.

1 Scope of request

You have requested access to the following documents:

I note the draft investigation findings of innumerable contraventions of the APS Code of Conduct (in s.13 of the Public Service Act 1999) recently put, for procedural fairness reasons, to stand down Secretary of the Department of Home Affairs, and crooked Liberal Party grub, Michael Pezzullo.

Under the FOI Act, I seek a copy of every email contained in the whole of Michael Pezzullo's Home Affairs' issued email account containing the phrase 'liberal.org.au'.

Documents falling within the scope of my request can be quickly identified and retrieved by searching the entirety of Mr Pezzullo's email client (including sent and archived emails) using the search term 'liberal.org.au'.

I'm happy to set out the wide public interest in the documents at issue by reference to particular acts engaged in by Mr Pezzullo as well as Ms Stephanie Foster's dealings with her crooked Liberal Party colleagues (eg. Phil Gaetjens and John Lloyd).

2 Revocation or variation of access refusal decision

Under section 15AC of the FOI Act, the Department was deemed to have refused your request for access to documents when it did not make a decision on your request within the statutory timeframes prescribed by the FOI Act.

Section 55G of the FOI Act provides for the revocation or variation of an access refusal decision, including a deemed refusal decision, during a review by the Information Commissioner.

Specifically, section 55G(1)(a) of the FOI Act provides that an agency may vary (or set aside and substitute) an access refusal decision if the variation or substitution would have the effect of giving access to a document in accordance with the request.

As a substantive decision on this request would have the effect of the Department giving access to one or more documents, either in full or in part, the Department has now revised its original deemed access refusal decision under section 55G(1)(a) of the FOI Act.

3 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 records.

4 Relevant material

In reaching my decision, I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- 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 15 documents as falling within the scope of your request, comprising 15 emails with 30 attachments. These documents were in the possession of the Department on 26 November 2023 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

6 Decision

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

- Release 6 documents in full
- Release 8 documents in part with deletions
- Release 1 document (Document 17) in full by providing access to the version of the document published on The Australia Institute:

- <https://australiainstitute.org.au/wp-content/uploads/2023/02/P1218-Party-platforms-on-corporate-democracy-Web-1.pdf>

The following attachments of the various emails are also publicly available:

- Document 1 – Attachment of email – page 3 – 150, by providing access to the version of the document published on the Parliament of Australia:
 - https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery/~/_/media/Committees/fapa_ctte/digitaldelivery/report.pdf
- Document 3 – Attachment of email – page 157 - 160 and 164 – 167, by providing access to the version of the document published on the John Menadue’s Public Policy Journal and the ABC News:
 - <https://johnmenadue.com/elaine-pearson-australias-government-must-guard-against-foreign-interference-but-not-by-curbing-our-rights/>
 - <https://www.abc.net.au/news/2018-08-30/dutton-ignored-border-force-advice-to-grant-au-pairs-visa/10182374>
- Document 6 – Attachment of email – page 194 – 237, by providing access to the version of the document published on The Centre for Independent Studies:
 - <https://www.cis.org.au/wp-content/uploads/2019/08/ap5.pdf>
- Document 8 – Attachment of email – page 247 - 248, 249 – 250, 253 – 254, 255 – 256, 263, by providing access to the version of the document published on the ACT Government, Mirage news, Department of Home Affairs and Paul Fletcher:
 - https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/gordon-ramsay-mla-media-releases/2019/tougher-laws-to-combat-organised-crime
 - <https://www.miragenews.com/australian-government-supports-high-resolves-school-based-programs-tackling-hatred/>
 - <https://minister.homeaffairs.gov.au/lindareynolds/Pages/disaster-assistance-longreach-primary-producers.aspx>
 - <https://minister.homeaffairs.gov.au/lindareynolds/Pages/bushfire-assistance-northern-central-west-nsw.aspx>
 - <https://www.paulfletcher.com.au/media-releases?page=67>
 - <https://www.miragenews.com/police-association-approves-of-labor-s-bill-to-protect-emergency-services-workers/>
- Document 9 – Attachment of email – page 294 – 408, by providing access to the version of the document published on the Analysis & Policy Observatory:
 - [https://apo.org.au/node/270231#:~:text=This%20report%20seeks%20to%20identify,Law%20Reform%20Commission%20\(ALRC\).](https://apo.org.au/node/270231#:~:text=This%20report%20seeks%20to%20identify,Law%20Reform%20Commission%20(ALRC).)

- Document 10 – Attachment of email – page 411 – 431, by providing access to the version of the document published on the Taylor & Francis Online:
 - <https://www.tandfonline.com/doi/full/10.1080/14799855.2019.1681403>
- Document 11 – Attachment of email – page 434 – 526, by providing access to the version of the document published on the Grattan Institute:
 - <https://grattan.edu.au/report/gridlock/>
- Document 12 – Attachment of email – page 556 – 571, and Document 16 – Attachment of email – page 573 - 612 by providing access to the version of the document published on the Department of Home Affairs:
 - <https://minister.homeaffairs.gov.au/ClareONeil/Documents/siev-915-JATFOSB-statement.pdf>

7 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are 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 30 November 2023, 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 decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

7.2 Section 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose deliberative matter relating to the deliberative processes involved in the functions of the Department.

'*Deliberative matter*' includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency.

'Deliberative processes' generally involves "the process of weighing up or evaluating competing arguments or considerations"¹ and the 'thinking processes –the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'²

Document 15 contains advice, opinions and recommendations, prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department, those functions being the Joint Agency Task Force (JATF) Operation Sovereign Borders (OSB), specifically the interception of the Suspected Illegal Entry Vessel (SIEV) 915 on the day of the Federal Election, Saturday 21 May 2022.

The Australian Border Force (ABF) is the front-line operational agency within the Department. Officers within the ABF are responsible for operational activity relating to the management of travelers, goods and cargo through the border continuum. This includes the assessment of individuals at the border. This assessment requires the expression of opinion and deliberation by those officers.

I am satisfied that disclosure of the deliberative information redacted and marked 's47C' could reasonably be expected to inhibit full and frank advice from the Department to its Minister, and, as a result, full consideration by the Government on any potential future consideration related to unauthorised arrivals.

Section 47C(2) provides that "deliberative matter" does not include purely factual material. I have had regard to the fact that "purely factual material" does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.³ A factual summary prepared to aid a complex issue may be classed as purely factual material, but may also be of a character as to disclose a process of section involving opinion, advice or recommendation. As such, a conclusion which involves a deliberative process may well prevent material from being purely factual⁴.

I am further satisfied that the factors set out in subsection (3) do not apply in this instance.

I have decided that the information is conditionally exempt under section 47C 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 at paragraph 7.4 below.

7.3 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

¹ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

² *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67

³ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

⁴ *Harris v Australian Broadcasting Corporation and Others* (1984) 1 FCR 150

whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents 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 the following four factors set out in s.47F(2) of the FOI Act:

- *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.*

I have considered each of these factors below.

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 emails related to Mr Pezzullo rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information redacted and marked 's47F' 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 at paragraph 7.4 below.

7.4 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.
- The subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- Some insights into public expenditure may be provided through examination of the documents.
- You do not require access to the documents in order to access your own personal information.

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

- Disclosure of the conditionally exempt information under section 47C could reasonably be expected to prejudice the ability of the Department to manage future review processes, inquiries and investigations. I consider that the disclosure of this type of deliberative material may hinder the future cooperation or participation in those processes, and that there is a real public interest in this agency being able to undertake effective reviews, investigations and inquiries in the future. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of the Department to manage its role of protecting Australia's borders. The information marked 's47C' in the documents consists of information prepared during a process of deliberation by a Border Force officer during their assessment of an individual at the border. Any precedent of disclosure of this type of information would, or could, result in an environment where Border Force officers were reticent to express their opinions and recommendations in relation to a particular individual. This would prejudice the ability of the Department to protect Australia's borders. I consider that the disclosure of this type of deliberative material may hinder similar future deliberations and decision making processes, and that there is a real public interest in this agency being able to undertake effective assessments of individuals at the border. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- Disclosure of the personal information of individuals contained in these documents could reasonably be expected to prejudice the protection of those individuals' right to privacy. Disclosing the names of Departmental officers who work in an operational environment may invite inappropriate approaches by third parties and may prejudice the safety of those officers and their families. The names of these particular officers

are not available through any other publicly available source and are not included in the Department organisational chart.

- Disclosure of personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of third parties' right to privacy. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy, and this factor weighs strongly against disclosure.
- I am satisfied that if the Department were to release personal information without that person's express consent to do so, it would seriously undermine public confidence in the Department's ability to receive, retain and manage personal information. I consider such a loss of confidence to be against the public interest, and this factor weighs strongly 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 would be contrary to the public interest and it is 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

Information Commissioner review

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for an Information Commissioner 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 <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.

10 Making a complaint

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

Your enquiries to the 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 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 Home Affairs as the relevant agency.

11 Contacting the FOI Section

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

Yours sincerely



Anthony Coles
First Assistant Secretary
Integrity, Security and Assurance Division
Position number 60037742
Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982*

FOI request: FA 23/11/01408

File Number: FA23/11/01408

No.	Date of document	No. of pages	Description	Decision on release	
1.	3 July 2018	2	Email with one attachment in scope, available publicly - Digital delivery of Government Services	Exempt in part	s.22(1)(a)(ii), s.47F(1)
2.	28 June 2018	2	Email with same attachment as Document 1	Exempt in part	s.47F(1)
3.	15 Nov 2018	7	Email with four attachments in scope, two available publicly	Exempt in part	s.22(1)(a)(ii), s.47F(1)
4.	14 March 2019	15	Email: MediaLink Report	Exempt in part	s.47F(1)
5.	21 May 2019	3	Email: Cyber Election Commitments	Exempt in part	s.22(1)(a)(ii), s.47F(1)
6.	25 Aug 2019	1	Email with one attachment in scope, available publicly - The China student boom and the risks it poses to Australian universities	Released in full	
7.	9 May 2019	4	Email: Media Monitoring: Media release, and one attachment - Morrison Government will continue to protect our borders	Exempt in part	s.47F(1)
8.	16 May 2019	35	Email with 17 attachments, six of which are publicly available	Released in full	
9.	8 Dec 2019	2	Email with one attachment in scope, available publicly - The future of law reform - a suggested program of work 2020-25	Released in full	
10.	18 Oct 2020	1	Email with one attachment in scope, available publicly - Political Parties, Australia and the U.S. Alliance - 1976-2016	Released in full	
11.	1 Aug 2021	2	Email with one attachment in scope, available publicly - Gridlock - removing barriers to policy reform	Released in full	
12.	6 April 2022	18	Email with one attachment in scope, available publicly	Released in full	
13.	30 May 2021	2	Email with one attachment in scope	Exempt in part	s.22(1)(a)(ii), s.47C(1) s.47F(1)
14.	22 July 2022	1	Email: SIEV 915 Public Announcement	Exempt in part	s.22(1)(a)(ii), s.47F(1)