



9 March 2024

CR

BY EMAIL: foi+request-11018-b56f7c50@righttoknow.org.au

In reply please quote:

FOI Request: FA 24/01/00548

File Number: FA24/01/00548

Dear CR

Freedom of Information (FOI) request – Access Decision

On 12 January 2024, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

I request access to the following documents under the Freedom of Information Act 1982:

- 1. All correspondence between the department's FOI team and the FOI applicant of request 'FA 23/10/01506'.*
- 2. All internal correspondence sent to/from the department's FOI team regarding the above-mentioned request.*
- 3. All correspondence between the department's FOI team and any external parties regarding the above-mentioned request.*
- 4. All correspondence between the FOI applicant and any external parties regarding the above-mentioned request.*

Please include any email attachments as they form part of the scope of this request.

2 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.

3 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
- advice from The Attorney-General's Department
- advice from The Office of the Secretary

4 Documents in scope of request

The Department has identified 56 documents, including four (4) duplicates, as falling within the scope of your request. These documents were in the possession of the Department on 12 January 2024 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.

5 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 46 documents in part with deletions
- Exempt six (6) documents in full from disclosure

6 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.

6.1 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 16 January 2024, 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.

6.2 Section 22 of the FOI Act – deletion of exempt material

I have decided to prepare an edited copy of the documents. The grounds upon which the edited copies of these documents have been prepared are set out in **Attachment A of the Schedule of Documents**.

6.3 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

Parts of the documents released to you contain 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, regarding decision-making entailing a response to the FOI applicant.

I am satisfied that this deliberative matter relates to a process that was undertaken within the Department to make a decision regarding a request for a list of internal documents that included the term “*ShadowDragon*” for the period 1 January 2023 to 26 October 2023. Part of the process included consultations/discussions with responsible business areas, marking up of documents, review of redactions, the application and explanation of exemption conditions and the like.

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 factual.⁴

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

I have decided that the information redacted and marked “s47C(1)” 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

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 disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.6 below.

6.4 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.

I consider that the disclosure of the parts of documents marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Some information marked 's47E(d)' consists of operational email addresses used by this Department. 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. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. 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.

I have decided that parts of 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 in that regard at paragraph 6.6 below.

6.5 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 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 third parties would be relevant to the broader scope of your request, as you are seeking access to correspondence regarding the Department's FOI team, external parties and the FOI applicant in connection with Freedom of Information Request - FA 23/10/01506, 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 in that regard at paragraph 6.6 below.

6.6 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:

- promote the objects of this Act (including all the matters set out in sections 3 and 3A)*
- 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 not seem to have a general characteristic of public importance. The matter has a limited scope and, in my view, would be of interest to a very narrow section of the public.
- No insights into public expenditure will 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 operational email addresses which are conditionally exempt under section 47E(d) of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. The Department has established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure of the exempt information.
- I consider that the public interest in protecting the internal Departmental processes of making FOI decisions, has, on balance, more weight, than the public interest that might exist in disclosing the deliberative matter/process.
- 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.
- While you may be aware of the personal information relating to some of these third parties, their information is not well known to the public generally. These documents are not available from publicly accessible sources. I have had regard to the fact that disclosure of information under the FOI Act must be considered to be a disclosure to the world at large and not just to you as the applicant.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that 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.

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

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>.

9 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.

10 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,

A handwritten signature in black ink, appearing to read 'Petrushka Mazur'.

Petrushka Mazur
A/g Assistant Secretary
Privacy, FOI and Records Management Branch
Legal Group
Department of Home Affairs

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 24/01/00548

File Number: FA24/01/00548

No.	Date of document	No. of pages	Description	Decision on release	
1.	26 October 2023	1	FOI Request from the Applicant	Release in Part	s.47F(1)
2.	31 October 2023	2	Scope Review Approval FA 23/10/01506	Release in Part	s.22(1)(a)(ii) s.47F(1)
3.	1 November 2023	2	Acknowledgement FOI Request FA 23/10/01506	Release in Part	s.22(1)(a)(ii) s.47F(1)
4.	1 November 2023	2	New FOI Request FA 23/10/01506 – Seeking documents	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
5.	1 November 2023	1	For Information - New FOI request received by the Department FA 23/10/01506	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
6.	1 November 2023	1	Draft Email ready to go in drafts folder - FA 23/10/01506	Release in Part	s. 22(1)(a)(ii) s.47E(d)
7.	2 November 2023	2	Allocation to NP Team FA 23/10/01506	Release in Part	s. 22(1)(a)(ii) s.47E(d) s.47F(1)
8.	6 November 2023	1	Response from Cyber Security Coordination Unit	Release in Part	s. 22(1)(a)(ii) s.47F(1)
9.	6 November 2023	1	Response from Intelligence Division	Release in Part	s. 22(1)(a)(ii) s.47E(d) s.47F(1)
10.	7 November 2023	3	Response from Procurement and Contracts Support	Release in Part	s. 22(1)(a)(ii) s.47E(d) s.47F(1)
11.	8 November 2023	2	Email to Identity Matching Services	Release in Part	s. 22(1)(a)(ii) s.47E(d) s.47F(1)
12.	9 November 2023	3	Response from Identity Matching Services	Release in Part	s. 22(1)(a)(ii) s.47E(d) s.47F(1)
13.	9 November 2023	2	Email from Strategy & Governance Branch	Release in Part	s.22(1)(a)(ii) s.47F(1)
14.	15 November 2023	1	Follow up email seeking documents	Release in Part	s.22(1)(a)(ii) s.47F(1)
15.	15 November 2023	1	Response from Regional Operations	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)

No.	Date of document	No. of pages	Description	Decision on release	
16.	16 November 2023	1	Follow up with Regional Operations	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
17.	16 November 2023	1	Follow up with Finance	Release in Part	s. 22(1)(a)(ii) s.47F(1)
18.	16 November 2023	1	Follow up with Payments and Credit Card Management	Release in Part	s.22(1)(a)(ii) s.47F(1)
19.	16 November 2023	1	Follow up with Intelligence Division	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
20.	16 November 2023	1	Follow up with Ministerial and Parliamentary Support	Release in Part	s.22(1)(a)(ii) s.47F(1)
21.	16 November 2023	2	Follow up with Office of the Hon Andrew Giles MP	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
22.	16 November 2023	1	Response from Payments and Credit Card Management	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
22.1	16 November 2023	1	Internal Records Management Search Attachment	Exempt in Full	s.47E(d)
23.	16 November 2023	1	Response from Parliamentary and Documentary Management System	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
24.	16 November 2023	1	Email to Immigration Compliance	Release in Part	s.22(1)(a)(ii) s.47F(1)
25.	16 November 2023	1	Response from Finance, Performance, and Reporting	Release in Part	s.22(1)(a)(ii) s.47F(1)
26.	16 November 2023	1	Response from Intelligence Division	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
26.1	16 November 2023	1	Attachment – List of Internal documents that includes the term "Shadow Dragon" for the period 1 January 2023 to 26 October 2023	Release in Part	s.47F(1)
27.	16 November 2023	1	Response from Parliamentary and Documentary Management System	Release in Part	s.22(1)(a)(ii) s.47F(1)
27.1	16 November 2023	5	Attachment 1 – TeleStrategies	Release in Part	s.47F(1)
27.2	16 November 2023	1	Email Attachment 2 - Telestrategies event	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
27.3	16 November 2023	1	Email Attachment 3	Release in Part	s.22(1)(a)(ii)
28.	17 November 2023	1	Response from Regional Operations	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)

No.	Date of document	No. of pages	Description	Decision on release	
29.	20 November 2023	1	Email from Status Resolution and Visa Cancellation	Release in Part	s.22(1)(a)(ii) s.47F(1)
30.	27 November 2023	1	Follow up email to National Profiling	Release in Part	s.22(1)(a)(ii) s.47F(1)
31.	28 November 2023	1	Email to Intelligence Governance for Review of the List	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
32.	28 November 2023	1	FOI Request FA 23/10/01506 – Review of Document – Office of the Secretary	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
32.1	28 November 2023	3	Secretary Tasking –Incoming Letter – Telestrategies	Duplicate	Duplicate
33.	28 November 2023	1	FOI Request FA 23/10/01506 – Response from the Office of the Secretary	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
33.1	28 November 2023	3	Secretary Tasking –Incoming Letter – Telestrategies	Duplicate	Duplicate
34.	28 November 2023	1	Confirmation Email from the Office of the Secretary	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
34.1	20 November 2023	2	Attachment – Secretary Tasking – Incoming Letter – Telestrategies	Duplicate	Duplicate
35.	28 November 2023	1	Confirmation Email from the Intelligence Division – No issues regarding release of the List	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
36.	4 December 2023	1	Confirmation Email from the Immigration Compliance Division	Release in Part	s.22(1)(a)(ii) s.47F(1)
37.	7 December 2023	1	Draft Decision and Doc to be Released for Review FA23/10/01506	Release in Part	s.22(1)(a)(ii) s.47C(1) s.47F(1)
37.1	7 December 2023		FA23/10/01506- Draft Decision	Exempt in Full	s.47C(1)
37.2	7 December 2023	1	List of any internal documents that includes the term "ShadowDragon" for the period 1 January 2023 to 26 October 2023.	Exempt in Full	s.47C(1)
38.	14 December 2023	2	Draft Decision Record for Review and Sign Off – Intelligence Governance - emails and attachments for review by the AS	Release in Part	s.22(1)(a)(ii) s.47C(1) s.47E(d) s.47F(1)
38.1	14 December 2023	4	Draft Decision Record for Review	Exempt in Full	s.47C(1)
38.2	14 December 2023	1	Attachment – List to be released	Exempt in Full	s.47C(1)

No.	Date of document	No. of pages	Description	Decision on release	
39.	15 December 2023	1	Updated Draft Decision Record - Approval for the release of the decision record with Attachment A by the AS	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
39.1	15 December 2023	2	Attachment – Updated Draft Record	Exempt in Full	s.47C(1)
40.	15 December 2023	2	Email - FOI Pending Decision FA 23/10/01506	Release in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1)
41.	21 December 2023	1	Email sent to the Applicant with Decision Record and Document Released	Release in Part	s.22(1)(a)(ii) s.47F(1)
41.1	21 December 2023	4	Decision Record Released to the Applicant	Release in Part	s.22(1)(a)(ii) s.47F(1)
41.2	21 December 2023	1	Document Released	Duplicate	Duplicate