



25 May 2016

**In reply please quote:**

FOI Request FA 15/11/00990  
File Number ADF2015/62503

E Meller

Sent via email: [foi+request-1373-d51b6e56@righttoknow.org.au](mailto:foi+request-1373-d51b6e56@righttoknow.org.au)

Dear E Meller,

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

This letter refers to your request received on 14 November 2016 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

*Incident Detail Report 1-3GBVST from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.*

**Decision**

The Department has identified one document that falls within the scope of your request. This document was in the possession of the Department on 14 November 2015 when your request was received.

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

- Exempt in part - one document subject to your request

The reasons for the decision are set out in the attached Decision Record at **Attachment A**.

The schedule for these documents is at **Attachment B** for your reference.

**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: xxx@xxxxxx.xxv.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](http://www.oaic.gov.au).

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

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department of Immigration and Border Protection in relation to your request.

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)  
Email ombudsman@ombudsman.gov.au

Your enquiries to the Australian 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 Ombudsman or 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.

**Contacting the FOI Section**

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

Yours sincerely



Shannon Bevan  
Authorised decision maker  
Freedom of Information Section  
Department of Immigration and Border Protection  
Email foib@border.gov.au

**Attachments**

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



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 15/11/00990  
File Number ADF2015/62503

#### Scope of request

*Incident Detail Report 1-3GBVST from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.*

#### 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 terms of your request
- the *Freedom of Information Act 1982*;
- the Australian Information Commissioner's guidelines relating to access to documents held by government
- Departmental documents, identified in the Schedule of Documents; and
- consultations with relevant business area/s.

#### Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part or in full to documents 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 FOI 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 FOI Act).

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

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

### **Deletion of irrelevant material as applied to your FOI request**

The documents contain information which is considered irrelevant to your request. Irrelevant information includes the names of Departmental staff below senior executive level and also the names of staff employed by Serco.

### **Conditionally exempt documents**

The documents I have considered fall under a 'conditional' exemption in the FOI Act.

I will explain what a 'conditionally exempt' document is before discussing the individual 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 issues 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 personal 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 the document falling within the scope of your request contains the personal information of third parties.

The exemption in s.47F(1) of the FOI Act applies if I am satisfied that the release of information would involve the *unreasonable* disclosure of third parties personal information.

The FOI Act states that when deciding whether the disclosure of personal information would be *unreasonable*. I *must* have regard to the factors set out in s.47F(2), being:

- (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 documents;*
- (c) *the availability of the information from publicly available resources;*
- (d) *any other matters that I consider relevant.*

I have considered each of these elements separately below.

(a) *Extent to which the information is known*

While I note that a summary of the incident is in the public domain, the specific details of the individual concerned has not previously been released. The identity of the individual is not widely known.

(b) *Whether the person to whom the information relates is known to be associated with the matters in the document*

As discussed above, the identity of the individual involved in the incident is not widely known. Their personal details in connection to the incident have not been previously released.

(c) *The availability of the information from publicly available sources*

As discussed above, there is a summary of the incident in the public domain. However, the personal information identified as exempt is not available through any public sources.

(d) *Any other matters that the agency considers relevant*

- The information is not your personal information.
- Every person has the right to expect that their personal information will be securely maintained by the Department.
- Whether the personal information; on its own; or in connection with other information already known to other persons, amounts to the individual being identified.

After considering each element in s.47F(2), I am satisfied that disclosure of personal information would be unreasonable.

Therefore, I am satisfied that the personal information I have identified in the relevant document is conditionally exempt under s.47F(1) of the FOI Act. A *conditionally exempt* document **must** be released under the FOI Act unless the release would be *contrary to the public interest*. As a result, I must now consider the factors set out in the public interest test in s.11B(3) of the FOI Act to determine whether the release of the information in the document would be 'contrary to the public interest'.

*Factors weighing in favour of release*

I am satisfied that the release of the documents 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 parties personal information contained in the relevant document 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 parties personal information would not allow you to access your own information. This factor does not weigh 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 documents:

- disclosure of the third parties personal information could reasonably be expected to prejudice the protection of the individual's right to privacy;
- it is a core Government concern to maintain an individual's privacy;
- no purpose would be achieved/served by releasing the third parties personal information; and
- the current relevance of the information.

On balance, I am satisfied that release of the third parties 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.

#### ***Public interest conditional exemption – certain operations of agencies – s.47E***

For information to be exempt under s.47E(d), I must be satisfied that there is a reasonable expectation that its disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and that there is no overriding public interest in favour of disclosure.

#### *Operational Information*

I am satisfied that the information contained in the incident report, could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department and is accordingly exempt under section 47E(d) of the FOI Act. The release of the 'operational' information, being the Church's name and location, could compromise the Department's ability to take detainees to public places of worship.

As set out above, a conditionally exempt document must be release under the FOI Act unless the release would be 'contrary to the public interest'. Therefore I must now consider whether its release would be contrary to the public interest.

#### *Factors weighing in favour of release*

I have considered the factors set out in s.11B(3) of the FOI Act.



Although release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

#### Factors weighing against release

In this case I have considered the following:

- whether disclosure of the information could reasonably be expected to prejudice the operations of this Department;
- whether disclosure of the information could reasonably be expected to require the Department to change the way it operates;
- whether disclosure of the information could reasonably be expected to prejudice the function of the Department to manage its portfolio;
- whether disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government;
- the need for openness and accountability of the Department's operations.

I am satisfied that releasing information about the way the Department operates, in particular the details of the Church identified in the incident report, would have a substantial adverse effect on the Department's operations.

On balance, I am satisfied that the release of the operational material in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the operational material in the documents is exempt from release under s.47E(d) of the FOI Act.



Shannon Bevan  
Authorised decision maker  
Department of Immigration and Border Protection

Email           foi@border.gov.au

25 May 2016



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**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 15/11/00990  
File Number ADF2015/62503

No.	Date of document	No. of pages	Description	Decision on release	
1.	04/01/2016	3	Incident Detail Report – 1-3GBVST	Exempt in Part	s.22(1)(a)(ii) s.47F(1) s.47E(d)

## 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.

## 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.

(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).

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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