



27 July 2016

**Reference numbers**

FOI Request FA 16/03/00084  
File Number ADF2016/9643

Mr Patrick Stavely

Sent via email: [foi+request-1606-e2cbe141@righttoknow.org.au](mailto:foi+request-1606-e2cbe141@righttoknow.org.au)

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

Dear Mr Stavely,

This letter refers to your request received on 25 February 2016 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

*The data that indicates the number of asylum seekers that have died on course to Australia and that have died while in detention in Australia. I would also appreciate each individual's personal details such as their age and cause of death.*

**Decision**

This letter is to provide you with my decision, which is to release the documents you have requested in part.

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: [foi@border.gov.au](mailto:foi@border.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](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](mailto: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](mailto: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.

Regards,

Brad Collins  
Freedom of Information Section  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Attachment C – Extract of relevant legislation
- Attachment D – Documents released under the FOI Act



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 16/03/00084  
File Number ADF2016/9643

#### Scope of request

1. On 25 February 2016 you requested:

*The data that indicates the number of asylum seekers that have died on course to Australia and that have died while in detention in Australia. I would also appreciate each individual's personal details such as their age and cause of death.*

#### Documents in scope

2. There is one document within scope of your request, which is a response to a media enquiry, part of which meets the scope of your FOI request.

#### Authority to make decision

3. 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

4. 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 areas.

#### Reasons for decision

5. 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.
6. 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 reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).

7. 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 FOI Act.

**Deletion of exempt material under s.22(1)(a)(i) of the FOI Act**

8. I have decided the document you requested is partially exempt from release on the following basis.

**Section 47F(1) – Personal privacy**

9. Section 47F(1) of the Act provides:

*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).*

*The relevant document contains ‘personal information’*

10. I am satisfied that the document to which you have sought access contains ‘personal information’, being the name and identifying information of the journalist who submitted the original media enquiry.

*Disclosure would involve the ‘unreasonable disclosure of personal information’*

11. In assessing whether a particular disclosure would be ‘unreasonable’, section 47F(2) sets out a number of factors which the Department *must* consider.

12. These factors are:

- 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; and
- d) any other matters that the agency or Minister considers relevant.

13. The personal information in the document is not well known. As such, I consider that disclosure of the personal information in the document would be unreasonable.

**Application of the ‘public interest’ test**

14. Although I have found that the information contained in the document you requested is conditionally exempt from release under s.47F(1), the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.

15. The factors favouring access to information are provided at s.11B of the FOI Act:

*Factors favouring access*

- (3) *Factors favouring access to the document in the public interest include 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.*

16. I am satisfied that the release of the information would promote the objects of the FOI Act as it would provide access to information held by Government.
17. I do not consider release of the exempted information would be of interest to the broader public, promote effective oversight of public expenditure, or allow a person to access his or her own personal information.

*Factors weighing against release*

18. I consider that it is in the broader public interest for journalists to be able to make enquiries to the Department in the course of their work without having their details released publicly, and that releasing the details of journalists may damage the relationship between the Department and the media.
19. On balance, I consider that the public interest factors against release of the exempted information outweigh the public interest factors for release of the information. I therefore partially exempt the document from release under s.47F(1) of the FOI Act.

**Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act**

20. I find that some of the document relevant to your request contains material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the Schedule of Documents and the document released.
21. The material deleted under s.22(1)(a)(ii) comprises answers to questions raised in the original Media Enquiry which were not covered by the scope of your request.

**Section 24A – documents cannot be found, do not exist or have not been received**

22. Your request includes information relating to the number of asylum seekers that have died on course to Australia.
23. The Operation Sovereign Borders Joint Agency Task Force was consulted on your request, and they have advised that the Department does not record official data reflecting this part of your request. While the Department does collect data on deaths at sea from publicly available sources, this information is not considered a document under the FOI Act (definition (d) of *document* in s.4 of the FOI Act).
24. I therefore refuse access to this information on the basis that it does not exist (s.24A(1)(b)(ii)).

Brad Collins  
Authorised decision maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

27 July 2016



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 16/03/00084  
File Number ADF2016/9643

No.	Date of document	Pages	Description	Relevant legislation (FOI Act)	
1.	24 February 2016	1-4	Media Enquiry response	Irrelevant in part Exempted in part	s.22(1)(a)(ii) 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.



## **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

### *Document lost or non-existent*

- 1) An agency or Minister may refuse a request for access to a document if:
  - a) all reasonable steps have been taken to find the document; and
  - b) the agency or Minister is satisfied that the document:
    - i. is in the agency's or Minister's possession but cannot be found; or
    - ii. does not exist.

### *Document not received as required by contract*

- 2) An agency may refuse a request for access to a document if:
  - a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - b) the agency has not received the document; and
  - c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

## **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.



## MEDIA ENQUIRY

s. 47F(1)

**Enquiry Received (Time & Date):** 4:40pm, Wed 24 Feb 2016

s. 22(1)(a)(ii)

### QUESTION / ISSUE

#### Response Key

DRPC Reporting  
Health Capability and Scrutiny  
Detention and Removals Operations

*Journalist's questions:*

s. 22(1)(a)(ii)

2. The number of people who have died while in detention centres in Australia in the past five years (2011, 2012, 2013, 2014, 2015). For each year, please list the detention centre and the cause of death.

s. 22(1)(a)(ii)



**TALKING POINTS**

s. 22(1)(a)(ii)

Q2:

Deaths In Held Detention			
Year	Facility	Deaths	Cause of Death
2011	Curtin IDC	1	Self-inflicted
	Scherger IDC	1	Self-inflicted
	Sydney IRH	1	Self-inflicted
2012	Sydney IRH	1	Natural Causes
2013	Curtin IDC	1	Natural Causes
	Darwin Airport Lodge	1	Under investigation
	Phosphate Hill APOD	1	Natural Causes
	Phosphate Hill APOD	1	Under investigation
	Villawood IDC	1	Natural Causes
	Villawood IDC	1	Self-inflicted
	Wickham Point IDC	1	Self-inflicted
2014	Brisbane ITA	1	Under investigation
	Maribyrnong IDC	1	Self-inflicted
	Melbourne ITA	1	Natural Causes
	Villawood IDC	1	Under investigation
2015	North West Point Immigration Facility	1	Under investigation
	Yongah Hill IDC	1	Under investigation
	Yongah Hill IDC	1	Under investigation
<b>TOTAL</b>		<b>18</b>	

\* Table consists of the total number of people who died while in detention centres in Australia. DIBP systems do not specifically record the cause of death for these incidents. The deaths listed as 'Under investigation' may still be the subject of investigation by police or may be subject to a coronial investigation or inquest.

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

