



Australian Government
Department of Finance

Reference: FOI 17/74
Contact: FOI Team
Telephone: (02) 6215 1783
e-mail: foi@finance.gov.au

Mr Jackson Gothe-Snape
Right to Know

via email: foi+request-3522-77cbfee7@righttoknow.org.au

Dear Mr Gothe-Snape,

Freedom of Information Request – FOI 17/74

Thank you for your email to the Department of Finance (**Finance**), dated 15 May 2017, in which you sought access to the following under the *Freedom of Information Act 1982 (FOI Act)*.

Can you please provide the brief on 'Immigration - Immigration Portfolio Issues' prepared as part of Additional Estimates 2016/17, mentioned in the index provided here:

<https://www.righttoknow.org.au/request/3303/response/9265/attach/5/Document%201.pdf>

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the document that falls within the scope of your request;
- submissions from the Department of Immigration and Border Protection (**DIBP**);
- publicly available information;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

I have identified one document falling within the scope of your request. I have decided to release that document, in part, with information exempt from release under sections 47C (deliberative information) and 47E(d) (substantial adverse effect on the operations of an agency) of the FOI Act.

Publicly Available Information

Some information relating to your request is publicly available. In particular:

- Budget Paper No 1 2016-17, Statement 8: Statement of Risk:
http://budget.gov.au/2016-17/content/bp1/download/bp1_bs8.pdf.
- The Mid-Year Economic and Fiscal Outlook (MYEFO) 2016-17:
<http://www.budget.gov.au/2016-17/content/myefo/download/10-Appendix-A-Expense.pdf>.
- Australian National Audit Office (ANAO) reports:
 - No 16 of 2016-17:
https://www.anao.gov.au/sites/g/files/net2766/f/ANAO_Report_2016-17_16.pdf.
 - No 32 of 2016-17: <https://www.anao.gov.au/work/performance-audit/offshore-processing-centres-瑙鲁-and-papua-new-guinea-contract-management>.

For completeness, I note that DIBP's response to the audit reports is available at Appendix 1 to the relevant reports.

Reasons for Decision

Section 47C – Deliberative processes

I have decided that parts of the document are conditionally exempt under section 47C of the FOI Act, which provides:

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth; or*
- (d) the Government of Norfolk Island.*

The OAIC Guidelines expand on this provision by stating:

6.56 A document may be conditionally exempt if it includes deliberative matter. Deliberative matter is content that is in the nature of, or relating to either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded*
- a consultation or deliberation that has taken place*
- in the course of, or for the purposes of, a deliberative process of the agency or minister (s 47C(1)).*

6.62 A deliberative process involves the exercise of judgement in developing and making a selection from different options

I am satisfied that parts of the document contain deliberative matter comprising opinion, advice and recommendations prepared by Finance for the purpose of an internal briefing on DIBP portfolio issues. This briefing was intended to inform senior Finance officers on matters

relating to Finance's functions regarding budget processes and government procurement (including resource management). As such, I consider that parts of the document contain information that is deliberative in nature, and is therefore conditionally exempt under section 47C of the FOI Act.

Deliberative information does not include operational information or purely factual material. I note that some information relevant to your request is already in the public domain (see 'Publicly Available Information' above), such information and material has not been redacted from the document.

Having formed this view, I am now required to consider whether disclosure of such information would be contrary to the public interest (see 'Public Interest Test' below).

Section 47E – Substantial Adverse Effect on an Agency's Operations

Section 47E of the FOI Act provides:

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 of 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.*

I am satisfied that parts of the document contain information that, if disclosed, would have a substantial adverse effect on the operations of Finance and/or DIBP.

The document contains information relating to onshore processing in Australia. These services are delivered in an evolving environment, often with complex operational requirements. In this context, it is necessary for DIBP to be sufficiently agile in its approach to service delivery, and to be in a position where it can make decisions on complex and sensitive matters within short timeframes.

Disclosure under FOI is effectively disclosure to the world at large. If the relevant information in the document were to become publicly known, this could adversely impact on the ability of DIBP to effectively undertake its administrative functions, in particular the processing of asylum claims. Further, DIBP could be placed in a position where it is pressured to adopt a less agile approach to service delivery, which would have a significant adverse effect on DIBP's ability to manage current and future operational requirements.

Aside from the impact on the operations of DIBP, the disclosure of the information could also reasonably be expected to have an adverse impact on Finance's operations. For Finance to have effective oversight over Commonwealth funding and expenditure, it is important for Finance to have effective working relationships with Commonwealth portfolio departments and have access to information relevant to the administration of its functions. As the information in the document does not necessarily reflect or paint a full picture of issues from DIBP's perspective (noting that the document was prepared for Finance's internal purposes only), this could affect the relationship between the two departments. In particular, DIBP

may be less likely to engage with Finance and provide similar information in the future, out of concern that information provided on a confidential basis could be released under FOI.

On the basis of the above, I am satisfied that disclosure of the information would have a substantial adverse effect on the proper and efficient conduct of the operations of DIBP and Finance. I have therefore decided that the information is conditionally exempt under section 47E(d) of the FOI Act.

Public Interest Test

Having formed the view that some material contained in the requested document is conditionally exempt under sections 47C and 47E(d) of the FOI Act, I am now required to consider the public interest test for the purposes of working out whether access to the exempt material would, on balance, be contrary to the public interest.

I have considered the following factors favouring disclosure as prescribed by subsection 11B(3) of the FOI Act:

- *Release of the document would promote the objects of the Act:* I note that the release of the exempt information may give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible.
- *Release of the document would inform debate on a matter of public importance:* I have also taken into account the general interest of the Australian community in the functions of DIBP. However, as there is already a substantial amount of information released to the public regarding the functions of DIBP (see 'Publicly Available Information' above), I do not consider that the release of the exempt information will further inform the Australian public on this matter.
- *Release would promote effective oversight of public expenditure:* I have considered that release of the materials would potentially promote effective oversight of public expenditure. However, as noted above, there is already a substantial amount of information released to the public regarding public expenditure (see 'Publicly Available Information' above), I do not consider that the release of the exempt information will further inform the Australian public on this matter.

I have also considered the following factors against disclosure of the document:

- *Disclosure could reasonably be expected to prejudice the activities of the Commonwealth agency:* I consider that the release of the exempt information could reasonably be expected to have a substantial adverse effect on the activities of DIBP. In particular, the document includes opinions, advice and recommendations from Finance, which were provided in confidence. As there is a reasonable expectation of confidentiality, disclosure could result in a loss of confidence in Finance's ability to handle confidential information for portfolio agencies appropriately.
- *Disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future:* Disclosure of the document may have a significant impact on Finance's ability to collect and provide similar information in the future as officers and other portfolio agencies of the Commonwealth, or third parties, may be unwilling to provide information to Finance if they are concerned that such information would be released.

- *Disclosure could reasonably be expected to prejudice the operations of an agency:* For the reasons set out above in the discussion relating to the application of section 47E(d), disclosure of the document is likely to have a significant adverse impact on DIBP's ability to manage current and future operational requirements in relation to onshore processing of asylum claims. There is also a national interest in ensuring that DIBP is able to effectively protect Australia's borders and manage entry into Australia by non-citizens, which includes ensuring that DIBP can procure the delivery of services in onshore processing centres in a manner that is responsive to the rapidly evolving environment.

There is also a public interest in providing public servants with a reasonable degree of space to freely think about and communicate issues, so that senior officers can receive frank advice and be properly informed about matters relating to their department's functions and activities (and in Finance's case, matters relating to the activities of portfolio departments which are relevant to Finance's functions). As noted above, the document was prepared for internal Finance purposes. If this document were to be released, Finance officers may be less candid in their advice and opinions in the future, which could result in senior officers being less informed about issues that could impact on Finance's functions and decision-making processes.

I have not considered the irrelevant factors, set out in section 11B(4) of the FOI Act.

Taking into account the factors above, I have determined that specific parts of the document, would be unreasonable to disclose and that factors against disclosure outweigh factors in favour of disclosure. I have determined that these parts of the document are conditionally exempt under sections 47C, and 47E(d), of the FOI Act. As such, I have decided to release the document, in part.

Review and Appeal Rights

You are entitled to request an internal review or a review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at [Attachment B](#).

Publication

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act and
- information in documents released under the FOI Act.

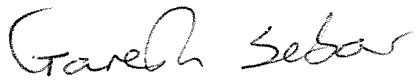
Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log (www.finance.gov.au) as soon as possible.

Finance's policy is to publish the documents within one working day after they are released to you.

Further Information

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,

A handwritten signature in black ink that reads "Gareth Sebar". The signature is written in a cursive style with a large initial 'G'.

Gareth Sebar
Assistant Secretary
Immigration, Border Protection and Foreign Affairs
Department of Finance
23 June 2017



Australian Government
Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can

review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant

decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$884 (from 1 July 2016), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or

has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html