



Australian Government

Department of Immigration and Border Protection

7 November 2013

Mr Lawrence Bull

By email foi+request-360-2730ea90@righttoknow.org.au

In reply please quote:

FOI Request FA 13/08/00966-R1

File Number ADF2013/27262

Dear Mr Bull

Freedom of Information Internal Review

This letter refers to your request received on 8 October 2013 seeking internal review under the *Freedom of Information Act 1982* (the FOI Act) of the department's decision of 4 October 2013 in relation to the following documents:

all incident reports (and their attachments) concerning the escape or recapture of detainees in Darwin between 1 May 2013 and 15 May 2013

In your request for review of this decision, you raised the following contentions:

Information in this document was redacted under s.47F(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)."

The FOI Act 1982 states: "personal information has the same meaning as in the Privacy Act 1988."

The Privacy Act 1988 states: "personal information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Therefore I would like to see the following information un-redacted:

- 1. The numerical counts of detainees in all instances*
- 2. In the fields: "Client was armed:" (yes/no)*
- 3. In the field: "Location Details:"*

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4. *Page 6 of 9 contains redactions of 'descriptions' in their entirety. In this instance I ask for the redactions to be reduced to their minimum necessary size, or a guarantee that each word, if uncovered, would identify one or more individuals.*
5. *The first sentence of page 7 of 9 has been redacted so as not to contain even a verb. This seems excessive as it is unlikely that the individuals would be identifiable by a verb. I ask that unnecessary redactions are removed.*
6. *The 'Officer Report Form' and 'Incident Report Form' were both redacted almost entirely under s. 47E(d). There was no mention of this clause in the Decision Record or in any other correspondence.*

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests for internal review. In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above);
- Request for Internal Review; and
- Guidelines published by the Office of the Australian Information Commissioner.

My decision is to release, in part, the documents within the scope of your request. I have made a decision to release some additional information, maintain some exemptions and in some instances apply different exemptions. Please see the attached Decision Record and Schedule of Documents for information on those documents which have been exempted or refused as part of this decision.

Review rights

Review by the Office of the Australian Information Commissioner

You may apply directly to the Australian Information Commissioner for a review of my decision.

You must apply in writing within 60 days of this notice. You can lodge your application in one of the following ways:

Post	GPO Box 2999 CANBERRA ACT 2601
or	GPO Box 5218 SYDNEY NSW 2001
Online	www.oaic.gov.au
Email	enquiries@oaic.gov.au
Fax	+61 2 9284 9666
In person	4 National Circuit BARTON ACT
or	Level 3, 175 Pitt Street SYDNEY NSW

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision to which you are seeking review and your contact details. You should also set out why you are seeking a review of the decision.

For further information about review rights under the FOI Act please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at www.oaic.gov.au.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. A complaint form is also available at www.oaic.gov.au.

If you are unhappy with the department's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process which has been outlined in the previous section.

Contacting the FOI section

If you wish to discuss this matter, I can be contacted by email to foi@immi.gov.au.

Client service information

Information about our Client Service Charter and how to make a compliment, complaint or suggestion, is included in the Client Service Information attachment.

Contacting the department

You can contact us with a general enquiry in a number of ways including by email, through our website, by telephone through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8.30 am and 4.30 pm Monday to Friday. Details on contacting our offices outside Australia are available on our website at www.immi.gov.au.

Yours sincerely



Rowan Patterson
Position number 60008295
Assistant Director
FOI & Privacy Policy Section
Department of Immigration and Border Protection
Email foi@immi.gov.au

Attachment(s)

Client Service Information

Decision Record

Schedule of Documents

Documents released

CLIENT SERVICE INFORMATION

Client Service Charter

Our Client Service Charter explains our service commitment to you. We are committed to service delivery that is timely, open and accountable, and responsive to your needs. The Charter explains how you can help us and how you can provide feedback or make a complaint. You can read our Client Service Charter on our website, or in a printed copy available from any of our offices.

Service satisfaction

The department remains committed to ensuring that all clients, both in Australia and overseas, receive not only fair and reasonable treatment, but also an efficient standard of service that is sensitive to each client's needs.

To provide a compliment, complaint or suggestion you can:

- telephone the Global Feedback Unit on 13 31 77 during business hours
- complete a feedback form online at www.immi.gov.au
- write to:
The Manager
Global Feedback Unit
GPO Box 241
Melbourne VIC 3001
Australia
- contact us directly through any of our offices.



Australian Government

Department of Immigration and Border Protection

DECISION RECORD

Client Details

FOI Request FA 13/08/00966-R1

File Number ADF2013/27262

Documents in scope

1. Incident Detail Report for Incident Number 1-PGHDXO

Information considered

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests for internal review. In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above);
- Request for Internal Review; and
- Guidelines published by the Office of the Australian Information Commissioner.

Reasons for decision

In your request for review, you put forward a number of contentions regarding the primary decision. I have responded to each contention in turn, outlining my decision to remove exemptions, continue to apply exemptions or to apply a different exemption.

The FOI Act 1982 states: "personal information has the same meaning as in the Privacy Act 1988."

The Privacy Act 1988 states: "personal information" means information or an opinion including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

You are correct in stating that this is the relevant definition of personal information relevant to the FOI Act. It does not, however follow that the information that you have requested to be 'un-redacted' does not meet the definition of 'personal information' as outlined in the Privacy Act.

Therefore I would like to see the following information un-redacted:

1. *The numerical counts of detainees in all instances*

I have un-redacted references to numbers where the information is already publicly available; however it is my view that the remaining numerical counts, if disclosed, would enable the identity/identities of the individuals covered by the count to be ascertained.

The inadvertent release of numbers of individuals who form a particular cohort can lead to the identification of individuals by other members of the cohort. In this case, information about individuals involved the incident, or in aspects of the incident can lead to the identification of these individuals.

While the numbers may not make the individuals identifiable to everyone, I am satisfied that they would make the individuals identifiable to a specific group that may not have previously been aware of the identities of the individuals involved due to their other knowledge of the incident.

While I accept that this may be a limited group of people, it remains that this group of people are individuals who may be known to the individuals involved. This, in my opinion adds to the unreasonableness of disclosure. It is reasonable to expect that individuals would not want it to be known to other individuals, who may have contact with them, or their families, certain sensitive material, as may be apparent from the disclosure of what may otherwise appear to be relatively innocuous information.

2. *In the fields: "Client was armed:" (yes/no)*

I am satisfied that the information says something about the client that, as part of the information available may enable the individual to be identified. As you are aware, this is a field that will include Y or N, due to the nature of the field, making a decision, for example that only one response or the other is personal information would, by omission reveal the other response as being true. Consequently, in order to protect the personal information of individuals in incident reports, such as this one, the disclosure of information in this field would be unreasonable.

3. *In the field: "Location Details:"*

It is not unreasonable to expect that individuals with knowledge of individuals in certain locations would be able to ascertain the identity of the individuals who were part of incident.

4. *Page 6 of 9 contains redactions of 'descriptions' in their entirety. In this instance I ask for the redactions to be reduced to their minimum necessary size, or a guarantee that each word, if uncovered, would identify one or more individuals.*

The information in the descriptions that were created on 13/05/2031 04:50:12PM and 14/05/2013 02:52:17PM respectively contain personal information that would be unreasonable to disclose. After further assessing the publicly available information I am satisfied that it would not be unreasonable to release some additional information from report created 14/05/2013 02:52:17PM. The only other information that would be able to be released that would not otherwise unreasonably disclose personal information are the words 'clients'. Due to the extent that the redactions need to be applied, any remaining words by themselves are devoid of meaning.

I do not find that there is an expectation that a decision maker will necessarily release words in a sentence that have so little meaning that release is meaningless.

I have found that the paragraph created on 13/05/2013 04:50:12PM does not contain personal information. However, I am satisfied that the disclosure of this would have an unreasonable impact on the operations of the agency.

This paragraph outlines the appropriate measures used by the department to secure the Northern Immigration Detention Centre facility. I am satisfied that if the information in this paragraph was released, it is reasonable to believe that it would enhance an individual's ability to circumvent the procedures in place to protect the facility.

5. *The first sentence of page 7 of 9 has been redacted so as not to contain even a verb. This seems excessive as it is unlikely that the individuals would be identifiable by a verb. I ask that unnecessary redactions are removed.*

After further assessing the publicly available information, I have released the verb and other information other than the count. My reasoning for not disclosing counts is included in my response to your first contention.

6. *The 'Officer Report Form' and 'Incident Report Form' were both redacted almost entirely under s.47E(d). There was no mention of this clause in the Decision Record or in any other correspondence.*

I have varied this decision in part to release additional information, but also to add exemptions on personal information grounds. I have conditionally applied s.47F(1) to information that could reasonably be expected to identify the individuals who were involved in the incident.

I have conditionally applied s.47E(d) to information that, if disclosed would cause an adverse effect on the proper and efficient conduct of the operations of the department by disclosing information that would enable individuals to circumvent the security procedures in place in immigration detention.

For conditionally exempt information to be removed from a document, I must be satisfied that disclosure of this information must be contrary to the public interest.

Having formed the view that the information in the documents is conditionally exempt, I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- there is a general public interest in making information held by the Government accessible to the public;
- inform debate on a matter of public importance; and
- the need for openness and accountability of the department's operations.
- the extent to which the information is known by the public.

On the other hand I considered the following in favour of non-disclosure as disclosure would result in:

- the inability of the department to maintain the privacy of the individuals involved;
- the prejudice of the fair treatment of individuals;
- an individual could circumvent procedures through the knowledge of the operations of the department; and
- reveal covert operating procedures, the release of which would require the department to change the way it operates to the detriment of the efficacy of the procedures.

On balance, I am satisfied that the disclosure of conditionally exempt information in this review decision would be contrary to the public interest.

The documents that removed/redacted under section 22(1)(a)(ii) of the FOI Act are those considered irrelevant to your request. It consists of the staff member who extracted the report from the department's CCMD portal and when the reports were extracted. This information is not part of the report and was created after your request was received.

As the documents contain information that is exempt under the FOI Act, I am able to provide you an edited copy of that document under section 22(1)(b). You can identify these documents in the schedule of documents with the words Exempt in part in the decision column.

Relevant legislation

Section 22 Deletion of exempt matter or irrelevant material

- (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.*

Section 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 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).

Section 47F Public interest conditional exemptions—personal privacy

- (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).

The documents that are exempt, either in full or in part, under section 47F of the FOI Act contain personal information.



Australian Government

Department of Immigration and Border Protection

SCHEDULE OF DOCUMENTS TO DECISION RECORD

1. Incident Detail Report for Incident Number 1-PGHD XO

Folio	Description	Decision	Legislation
1-10	Incident Detail Report	Exempt in part	s.22(1)(a)(ii) & s.47F(1)
11	Officer Report Form	Exempt in part	s.47E(d) & s.47F(1)
12-16	Incident Report Form	Exempt in part	s.47E(d) & s.47F(1)

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