



5 July 2018

Mr Asher Hirsch

BY EMAIL: foi+request-3682-2b2e21ae@righttoknow.org.au

In reply please quote:

FOI Request: FA 17/06/00884

File Number: ADF2017/68753

Dear Mr Hirsch

Decision on internal review – Freedom of Information Act 1982

The purpose of this letter is to advise you of an internal review decision made by the Department of Home Affairs ('the Department') under section 54C of the *Freedom of Information Act 1982* ('the FOI Act').

You have requested the Department review its decision of 19 September 2017 to refuse access to documents you requested under the FOI Act. The Department received your internal review request on 16 October 2017.

I am authorised under section 23 the FOI Act to make decisions on FOI requests, including internal reviews.

1 Scope of original request

The Department received your original request for access on 29 June 2017. The scope of your original request was as follows:

'In 2012 the Australian Customs and Border Protection Service funded the International Organisation for Migration (IOM) to produce a document titled "Manual for the Coordinated Handling of People Smuggling: Interceptions, Investigations and prosecutions in Indonesia".

I request under the Freedom of Information Act documents and files relating to the development of this document, including but not limited to:

- The contract for the production of this document*
- The cost of the production of this document*
- Correspondence between the ACBPS and IOM relating to this document*
- Correspondence between the ACBPS and other Australian Government departments relating to this document.'*

2 Original decision on access

The Department identified one document, comprising 33 pages, as falling within the scope of your original request. This document was in the possession of Department on 29 June 2017, when it received your FOI request.

On 19 September 2017, the original decision maker decided to refuse access to the document on the grounds that it was an exempt document under section 33(a)(iii) of the FOI Act.

3 Request for internal review

On 16 October 2017, you requested the Department review its decision of 19 September 2017. You provided the following reasons:

Please see below my reasons for seeking internal review:

International relations:

I do not agree that the release of these documents would impact international relations, especially as Indonesia participated in the production of these documents and would already know the details of the documents. Indeed, the Manual in question is a document produced for the Indonesian police and funded by the Australian Government. It has forwards from Indonesian Ministers who praise the document.

Further, I note the reason for the refusal is also that the documents have had a "very limited circulation and are only available to a select number of people on a strict needs-to-know basis". I note that this is not a ground for refusal under the Act.

I therefore request an internal review of the decision.

4 Internal review decision

I have reviewed the documents within the scope of this request and considered the submissions made by you in requesting an internal review.

I have decided to set aside the original decision of the Department to refuse access to the documents identified within the scope of the request on the grounds that they are exempt documents.

As a substitute for the original decision, I have decided:

- that the documents determined to be exempt in the original decision do not fall within the scope of the request
- to refuse access to the documents requested on the grounds that they cannot be found.

I have provided the reasons for my decision below.

5 Reasons for decision: documents within scope of request

5.1 Original decision to identify documents within scope of request

In its searches for documents conducted as part of the original decision, the Department identified a number of documents that related to some extent to the production of the manual:

- a funding agreement between the Commonwealth of Australia and the IOM in relation to a project titled: '(Extended): Reinforcing Management of Irregular Migration in Indonesia Through the Setting Up Of a Network of Monitoring and Coordination Offices Project, Phase 2 (RMIM2)' ('the RMIM2 funding agreement')
- an unsigned and undated document with the file title 'Example funding agreement'. The contents of this document, which is in draft form, indicated that it was produced in late 2011 and that it is a funding agreement between the ACBPS and the IOM 'in relation to the review, revision and reprinting of the 2009 handbook and field guide to assist people smuggling investigations and operations in Indonesia'
- invoices and documents relating to the RMIM2 project in general.

The primary decision maker identified the RMIM2 funding agreement to be within the scope of the request and determined the other documents listed above to be outside the scope of the request.

I further note that the original decision did not cover parts three and four of your request: namely for documents comprising correspondence between the ACBPS and the IOM and between the ACBPS and other Australian government departments relating to the manual.

5.2 Internal review decision on identification of documents within scope of request

I am not satisfied that the RMIM2 funding agreement document meets the description of a contract for the re-print of the manual, which was the first document requested by you. I am also not satisfied that this document meets the description of the second part of your request, since it refers to costs associated with the entire range of communications projects, rather than the manual specifically.

The Department funded the re-printing of the manual in 2012 as part of the broader RMIM2 project, which covered a number of different activities. It is the RMIM2 project, rather than the specific manual project, to which the RMIM2 funding agreement assessed in the original decision refers.

The RMIM2 funding agreement document contains no references to either edition of the manual, nor does the budget section of the agreement describe the specific cost of producing the manual. The sole indirect reference to the manual is in one paragraph on page 20 which refers to 'informational material on irregular migration' that will be produced by the IOM under the terms of the agreement. The budget section of the funding agreement does not list the specific cost of the production of the manual, but rather refers to the funding of communications projects generally. Furthermore, the RMIM2 funding agreement dates from 2009, while you have indicated that the documents you seek relate to the re-print of the manual in 2012.

In my opinion, a final version of the document titled 'Example funding agreement' – the draft version of which was located by the Department – would be within the scope of this FOI request in relation to points one and two of your request. The draft version of this document does refer specifically to the production of the 2012 manual, and includes a detailed schedule, budget and implementation details.

However, while the draft version of the document titled 'Example funding agreement' does contain information about the production and costing of the manual, the only version of the document that the Department has located is unsigned and incomplete.

As the draft 'Example funding agreement' document does not indicate the final contract terms ultimately agreed to by the two parties, the Department has not been able to establish that the document meets the description of a contract for the production of the manual or a document indicating the production costs. I have therefore concluded that this document is also outside the scope of your request.

I am of the opinion that the other documents located during the searches are also out of the scope of the request. These documents do not refer to the development, contractual arrangements or cost of re-printing the manual in 2012.

6 Reasons for decision: documents that cannot be found

6.1 Section 24A(1)(b)(i) of the FOI Act – refusal of access to documents that cannot be found

Section 24A(1)(b)(i) of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the documents cannot be found.

Several relevant business areas of the Department undertook searches for documents within the scope of your request. In the original decision, these searches were undertaken by Southeast Asian and ASEAN Section (International Policy Division), Strategic Border Command, the Joint Agency Task Force and Intelligence Support.

The searches involved checking Total Records and Information Management (TRIM – the Department's records management system), archived email folders, local file holdings and the ACBPS corpnet local drive. Officers in the International Policy Division also made enquiries with the Department's Jakarta post.

Having made the decision that the RMIM2 funding agreement does not fall within the scope of the request in the course of this internal review, the Department attempted to locate further relevant documents, in particular a final version of the document titled 'Example funding agreement' and any correspondence relating to the manual. These searches involved:

- searches conducted by officers from Southeast Asia and ASEAN section, International Policy division. An officer advised that the section had been unable to locate the final version of the 'Example funding agreement' and further advised that, since the document was in draft form only, they could not confirm whether a final version of the document had eventually been endorsed by the relevant parties. The officer confirmed that the section had conducted a search for all documents about the development of the manual, including correspondence, but had not identified any documents. The searches undertaken by this section involved a search of archived email folders, local drives and HP Records Manager (HPRM), the Department's current records management system.
- searches conducted by officers from People Smuggling Intelligence, Intelligence Division. The officers advised that they had checked all printed holdings of files along with electronic folders at both Protected and Secret classification levels. No documents relating to the manual were located by these officers.

Having considered the searches outlined above, I am satisfied that the Department has undertaken reasonable searches in relation to your request and that no

documents were in the possession of the Department on 29 June 2017 when it received your request.

As such I am refusing access to the documents requested by you under section 24A(1)(b)(i) of the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 Your Review Rights

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 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 Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

9 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

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 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 Home Affairs as the relevant agency.

10 Contact

Should you wish to discuss my decision, please do not hesitate to contact the Department via email at foi.reviews@homeaffairs.gov.au.



Robert McGregor
Authorised Decision Maker
Department of Home Affairs