



23 October 2017

Mr Bill Tarte

**BY EMAIL: [foi+request-4052-f2c4ebef@righttoknow.org.au](mailto:foi+request-4052-f2c4ebef@righttoknow.org.au)**

**In reply please quote:**

FOI Request: FA 17/08/01086

File Number: ADF2017/92121

Dear Mr Tarte

**Freedom of Information (FOI) request - Access Decision**

On 27 August 2017, the Department of Immigration and Border Protection (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following document:

*'Please provide a copy of the final risk assessment of the "Security Risk Assessment Tool" project. The "Security Risk Assessment Tool" I am referring to is the one reference in the recent article in The Age here (<http://www.theage.com.au/federal-politics/political-news/computers-replace-humans-in-assessing-danger-of-inmates-in-immigration-detention-20170825-gy4i19.html>)'.*

**2 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 document or to amend or annotate records.

**3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to the request
- the FOI Act

- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access and
- the Department's guidance material on the FOI Act.

#### **4 Document in scope of request**

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 27 August 2017 when your request was received.

#### **5 Decision**

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

- Exempt one document in full from disclosure.

Detailed reasons for my decision are set out below.

#### **6 Reasons for Decision**

For the reasons set out below, I have exempted certain information in the document.

My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

##### **6.1 Section 37 of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety**

Section 37(2)(b) of the FOI Act provides that documents are exempt from disclosure if its disclosure would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would or could reasonably be expected to, prejudice the effectiveness of those methods or procedures.

I consider that the document contains information about the Department's lawful investigative methods and procedures relating specifically to the safe and secure management of people while accommodated at Immigration Detention facilities. The release of the document would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting risks while operating Detention facilities. The disclosure of the document would, or would reasonably be expected to, prejudice the effectiveness of those methods or procedures.

The disclosure of information in this document is reasonably likely to impact on ongoing investigative methodology and the mechanisms used for the orderly management of the safety, security and good order of the operational management of the Detention facilities. The release of this information would prejudice the effectiveness of those methods or procedures, assisting endeavours to evade those processes, and thereby reducing the ability of the Department to conduct adequate processes for the safety including the operational management of people being detained.

The Department strongly contends, that if the document was to be released in any form, this information would prejudice or could reasonably be expected to, have a substantial adverse effect on the management of operational mechanisms conducted at Immigration Detention facilities. Furthermore, the release of such documents would provide people with an unfair advantage allowing them to modify their behaviour to prevent and to better avoid detection in the future and providing them with details on how to circumvent these methodologies.

If the document were to be released in any form this information would prejudice the Department's ability to investigate such breaches in the future.

I have decided that this information is exempt from disclosure under Sections 37(2)(b) of the FOI Act.

## **6.2 Section 47E of the FOI Act – Operations of Agencies (conditional exemption)**

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. The Department is responsible for protecting Australia's border and managing the movement of people and goods across it. As such, the Department operates in a position of trust within the border environment. In return, the community, the Australian Government and our business partners expect the security and integrity of Australia's borders to be of high standard.

### *Mosaic theory*

This theory holds that individual pieces of information, when combined with other pieces, can generate a harmful composite, - a mosaic, that can damage the operations of an agency.

It is important to note that when assessing the potential harm in releasing a document, a decision maker will consider the content of the document in question. However, when evaluating the potential harmful effects of disclosing documents that affect the Commonwealth, decision makers may also take into account the 'mosaic theory'.

The document exempted holds national level framework to the detainee risk assessment process which is sensitive. Access to this information is strictly limited to certain people authorised to access it within the Department. The Department has an obligation to keep such information confidential, not only to protect its own information, but the information and records that the Department retains on behalf of individuals, businesses, other government agencies and international governments.

I consider that the document exempted under this exemption would, or could reasonably be expected to disclose lawful methods or procedures used by the Department in assessing applicants who may pose a risk to the Australian community.

The disclosure of this type of information would be likely to impact ongoing investigative methodology and operations of the Department in undertaking the assessment of those in the Detention facilities.

I am satisfied that the release of this information would prejudice the effectiveness of those methods or procedures, assisting endeavours to evade them, resulting in an integrity risk to the Department, thereby reducing the ability of the Department to maintain the security and integrity of the borders of Australia.

The disclosure of this type of information would also cause the Department to change or divert the conduct of border protection activities.

Taking into account all of the above, I consider that disclosing sensitive methodologies relating to the functions of the Department in its role as a law enforcement agency, to be adverse, serious and not insubstantial. I therefore find that the document is conditionally exempt under section 47E(d) of the FOI Act.

Nonetheless I must give access to the documents *unless*, in the circumstances, access at this time would on balance, be contrary to the public interest. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below at paragraph 6.4.

### **6.3 Section 47G of the FOI Act – Business affairs (conditional exemption)**

Section 47G(1)(a) of the FOI Act allows for conditional exemption to be applied to documents containing information concerning business or professional affairs of the business, commercial or financial affairs of an organisation, where disclosure would or could reasonably be expected to unreasonably affect a business in respect of its lawful business, commercial or financial affairs.

I find that the documents exempted under section 47G(1)(a) contain information concerning an external agency who conducts assessments for the Department. I find that disclosure of this information would, or could reasonably be expected to, adversely affect that external agency in respect of their lawful business affairs. I also consider that disclosing this information could prejudice the future supply of information to the Department.

In finding that the adverse effect would be unreasonable, I have considered the information is not publicly known and the disclosure of the exempt material would have an adverse effect in relation to the business.

I therefore find that the document meets the requirement of the conditional exemption under section 47G(1)(a) of the FOI Act.

Nonetheless I must give access to the documents *unless*, in the circumstances, access at this time would on balance, be contrary to the public interest. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below at paragraph 6.4.

### **6.4 The public interest for conditional exemptions – section 11A of the FOI Act**

As I have decided that the document is exempt in full and the document is conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A) of the FOI Act.

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt document would, on balance, be contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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, and
- (d) allow a person to access his or her own personal information.

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act
- I consider that the subject matter of the documents does not, in itself, seem to have the character of public importance
- I consider that no insights into public expenditure will be provided through examination of the documents
- I consider that the release of the document to you would not allow you access to your own personal information
- I am satisfied that the release of the conditionally exempt information would adversely impact the business affairs of the external agency who provides a service to the Department and hence affect the proper and efficient conduct of the operations of the Department, and
- It is my opinion that disclosure of any aspects of the document would not provide sufficient information, would not promote scrutiny of government decision making nor would it reveal the reasoning for a government decision. Therefore, I give neutral weight to this consideration.

I have given regard to section 11B(4) of the FOI Act which sets out the irrelevant factors to my decision, which are:

- (a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government*
- (b) *access to the document could result in any person misinterpreting or misunderstanding the document*
- (c) *the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made*
- (d) *access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt document is not in the public interest and determined that the conditionally exempt document is exempt from disclosure under 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**

### Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this 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 a 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:

By email to: [foi.reviews@border.gov.au](mailto:foi.reviews@border.gov.au)

OR

By mail to:  
Freedom of Information Section  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

### 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](mailto: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 Immigration and Border Protection as the relevant agency.

## 10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au).



Geoff Hill

**Authorised Decision Maker**

**Department of Immigration and Border Protection**