



28 September 2018

Dr Anthea Vogl

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In reply please quote:

FOI Request: FA 18/03/00501
File Number: ADF2018/28592

Dear Dr Vogl

Freedom of Information (FOI) request - Access Decision

On 7 March 2018, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act), via the Right to Know website.

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 documents:

1. *The total number of illegal maritime arrivals (IMAs) or asylum seekers holding bridging visas who have been detained or redetained under the powers outlined s 116 of the Migration Act 1958 {Cth} from and including 1 June 2014 up to and including 30 August 2016.*
2. *The total number of IMAs or asylum seekers holding bridging visas who have been detained or redetained as a consequence of a breach of the Code of Behaviour for Subclass 050 Bridging (General) visa holders ('the Code') from and including 1 June 2014 up to and including 30 August 2016.*
3. *If a bridging visa is cancelled under s116 of the Migration Act 1958 or the Code is redetention automatic? Or do some IMAs/ asylum seekers remain in the community? Any documents outlining policies, procedures or guidelines stipulating how and in what circumstances detention or re-detention occurs.*
4. *Where allegations involving criminal offences by asylum seekers or IMAs are made to the Department of Home Affairs under s 116 of the Migration Act 1958 or the Code:*
 - a. *any documents which govern how and on what basis these allegations are referred to the relevant police force.*
 - b. *details of procedures in place to manage the ongoing relationship with the police,*

including how and whether details are communicated in relation to charge, arrest, progress of proceedings, or verdict where relevant.

c. Any documents outlining policies, procedures or guidelines stipulating how alleged breaches involving 'child protection issues' and domestic violence are to be dealt with by the Department of Home Affairs and/or case managers and/or service providers.

5. Where allegations involving criminal offences by asylum seekers or IMAs are made to State or territory police forces:

a. any documents which govern how and on what basis these allegations are referred to the Department of Home Affairs.

b. details of procedures in place to manage the Department of Home Affairs' ongoing relationship with the police, including how and whether details are communicated in relation to charge, arrest, progress of proceedings, or verdict where relevant.

6. Details of dates of any AAT decisions that overturned bridging visa cancellations made under s116 of the Migration Act 1958 or the Code in the period from 27 April 2014 to 30 August 2016 (as these details were not provided in the original table made under FOI request FA 16/01/01847).

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 documents or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents 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 documents to which you sought access.

4 Documents in scope of request

The Department has identified five documents as falling within the scope of Parts 3 to 6 of your request. These documents were in the possession of the Department on 7 March 2018 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

5 Tranche Decisions

Given the large volume and complex nature of the documents identified as relevant to your request, I propose to make interim tranche decisions on this matter as the documents are processed. At this stage I propose to make the final tranche decisions regarding Parts 1 to three of your request by 15 October 2018.

A final consolidated decision on your FOI request will be made at the completion of this staged decision making process. This will include a consolidated notice of decision and schedule of all documents in response to the request.

Scope of this tranche decision

This notice applies to the 1st tranche of documents processed. The documents in this tranche meet the description in Parts 3 to 6 of your request.

6 Decision

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

- Release three documents in part with deletions
- Exempt two document in full from release

7 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

7.1 Section 22 of the FOI Act – irrelevant to request

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 9 March 2018, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that parts of document marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as /they are relevant to your request.

7.2 Section 47E of the FOI Act – Operations of Agencies

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.

I consider that the disclosure of the parts of documents marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

The relevant business area of the Department advises that following the outcome of a recent Federal Court decision, some departmental policy and procedural documents may not be drafted in a legally accurate way. Documents 3 and 4 titled as: '*Employment screening for child-related positions*' *Policy Statement* and *Procedural Instruction* are documents impacted by this decision. As such, I consider that it would not be appropriate to release Documents 3 and 4 until a full legal compliance review has been undertaken. I am advised that these documents are currently being updated by the relevant business area concerned.

In addition to the above, some information marked 's47E(d)' consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

Accordingly, I have decided that the documents are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. 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.

7.3 The public interest – section 11A of the FOI Act

As I have decided that parts of the documents are 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 part of the document would be, on balance, 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;
- (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 seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- I consider that the ability of the Department to utilise email addresses which are not at risk of being maliciously targeted to be in the public interest.
- I consider that the Department's obligation to provide legally accurate information to the public to be in the public interest.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant 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 information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

8 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.

9 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@homeaffairs.gov.au
OR
By mail to:
Freedom of Information Section
Department of Home Affairs
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>.

10 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.

11 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

(signed electronically)

Authorised Decision Maker
Position number: 60008296
Department of Home Affairs

ATTACHMENT A**SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982**

FOI request: FA 18/03/00501
File Number: ADF2018/28592

No	Date of document	No. of pages	Description	Decision on release	
1.	25/10/2017	16	Reporting Child-related incidents – Policy Statement	Irrelevant material deleted Released in part	s.22(1)(a)(ii) s.47E(d)
2.	25/10/2017	16	Draft – Reporting Child-related incidents – Policy Statement	Irrelevant material deleted Released in part	s.22(1)(a)(ii) s.47E(d)
3.	17/07/2017	19	Employment screening for child-related Positions – Policy Statement	Exempt in full	s.47E(d)
4.	14/07/2017	25	Employment screening for child-related Positions – Procedural Instruction	Exempt in full	s.47E(d)
5.	January 2015	77	Unaccompanied Humanitarian Minors Programme – Policy and Procedures Programme	Irrelevant material deleted Released in part	s.22(1)(a)(ii) s.47E(d)