



18 February 2019

Mr Asher Hirsch

BY EMAIL: foi+request-4782-3f25f2e3@righttoknow.org.au

In reply please quote:

FOI Request: FA 18/09/00469

File Number: ADF2018/191833

Dear Mr Hirsch

Freedom of Information (FOI) request - Access Decision

On 7 September 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).

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:

All documents and correspondence relating to the FOI request FA 17/08/00642-R1, and the associated internal review.

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 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 25 documents as falling within the scope of your request. These documents were in the possession of the Department on 7 September 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 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 25 documents in part with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

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

6.1 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, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

Information for which I have had regard to being irrelevant to the scope of this request includes:

- On 12 September 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.
- The documents make reference to documents for which the Department has issued an access decision under the FOI Act. Reference to these documents and the attachments have been not considered as part of this request and marked as irrelevant under s22(1)(a)(ii).
- Correspondence received from you (as the FOI applicant), and correspondence (including copies) sent to you by the Department regarding FA 17/08/00642 is considered to be information previously released and therefore is not included as part of this request.
- Information and attachments that specifically relate to other FOI requests and is not public have been identified as irrelevant.

I have therefore decided that parts of documents marked s22(1)(a)(ii) would disclose information that could reasonably be regarded as irrelevant to your request and have

prepared an edited copy of the documents 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.

6.2 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information, the circumstances in which it was communicated, and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.

I consider that the release of the information marked s33(a)(iii) in the documents would, or could reasonably be expected to cause damage to the Australian Government's international relations.

In reaching this decision I have consulted subject matter experts on the international relations that would be impacted by the release of the specific information. The parts of documents marked s33(a)(iii) contains information relating to the role of the International Organization for Migration (IOM) relating to the Regional Cooperation Agreement (RCA) that is not in the public domain and provides insight into the terms of the agreement between the Australian government and government of Indonesia. I am satisfied that the disclosure of the parts of documents marked s33(a)(iii) could reasonably be expected to inhibit future negotiations between the Australian government and a foreign government.

As such I have decided that the information redacted and marked 's33(a)(iii)' is exempt from disclosure under section 33(a)(iii) of the FOI Act.

6.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency. 'Deliberative processes' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'¹

¹ See *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

The documents contain advice, opinions and recommendations prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of Department, being internal considerations relating to the release of information under the FOI Act.

Disclosure of this deliberative information could reasonably be expected to inhibit full and frank internal deliberation and advice within the Department in the assessment and preparation of a decision under the FOI Act.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

I have decided that the information is conditionally exempt under section 47C 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

6.4 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.

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.

6.5 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked s47F in the document would disclose personal information relating to a third party. The information within the document would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The information relating to the third party is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individual concerned is not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the a third party would be relevant to the broader scope of your request, as you are seeking access to documents relating to an FOI request rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the document would involve an unreasonable disclosure of personal information about an individual.

I have decided that the information referred to above is conditionally exempt under section 47F 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.

6.6 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 specific exempt information 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.

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

- Disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of the Department to provide full and frank policy advice between its internal stakeholders relating to matters that concern a foreign government. I consider that there is a strong public interest in there being no hindering of that process. I am of the view that a precedent of public disclosure of advice given as a part of those deliberative processes would result in such concerns existing, which may then hinder future deliberations and decision making processes for the Department and the Government as a whole. I consider that the public interest in protecting the process of providing advice and recommendations in relation to discussions concerning the release of sensitive information under the FOI Act, on balance weighs more than the public interest that might exist in disclosing the actual deliberations.
- Disclosure of the operational email addresses which are conditionally exempt under section 47E(d) of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure of the exempt information.
- The Department has established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter.
- Disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of that individual's right to privacy.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in

the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.

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 would be contrary to the public interest and it is therefore 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@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>.

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 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.

Yours sincerely



Janelle Raineri
Authorised Decision Maker
Department of Home Affairs

SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 18/09/00469

File Number: ADF2018/191833

Doc. No.	Date of document	No. of pages	Description	Decision on release	
1.	15.08.2017	2	Email – DFAT to Department	Release in part	s.22(1)(a)(ii)
2.	17.08.2017	2	Email – FOI Section	Release in part	s.22(1)(a)(ii)
3.	17.08.2017	3	Email – FOI Section	Release in part	s.22(1)(a)(ii)
4.	17.08.2017	2	Email – Department to DFAT	Release in part	s.22(1)(a)(ii)
5.	17.08.2017	3	Email – DFAT to Department	Release in part	s.22(1)(a)(ii)
6.	17.08.2017	2	Email – DFAT to Department	Release in part	s.22(1)(a)(ii)
7.	21.08.2017	2	Email – FOI to International Division	Release in part	s.22(1)(a)(ii)
	-	1	Attachment: FOI Checklist	Release in part	s.22(1)(a)(ii)
8.	21.08.2017	2	FOI new request alert	Release in part	s.22(1)(a)(ii)
9.	21.08.2017	3	Email – International Division to FOI	Release in part	s.22(1)(a)(ii)
	14/07/2017	3	Attachment: relating to FA 17/06/00830	Release in part	s.22(1)(a)(ii)
10.	06.09.2017	1	Email – FOI to International Division	Release in part	s.22(1)(a)(ii)
11.	12.09.2017	2	Email – International Division to FOI	Release in part	s.22(1)(a)(ii)
12.	13.09.2017	3	Email – FOI to International Division	Release in part	s.22(1)(a)(ii) s.47F(1)
13.	13.09.2017	1	Email – International Division to FOI	Release in part	s.22(1)(a)(ii) s.47E(d)
14.	13.09.2017	2	Email - Media Operations to FOI	Release in part	s.22(1)(a)(ii) s.47E(d)
15.	13.09.2017	2	Email – FOI to Media Operations	Release in part	s.22(1)(a)(ii) s.47E(d)
16.	14.09.2017	2	Email pending decision alert	Release in part	s.22(1)(a)(ii)
17.	08.05.2018	6	Email – FOI Reviews to International Division	Release in part	s.22(1)(a)(ii) s.47C(1) s.33(a)(iii)
18.	12.05.2018	6	Email – International Division to FOI Reviews	Release in part	s.22(1)(a)(ii) s.33(a)(iii) s.47C(1)

19.	17.05.2018	11	Email – FOI Reviews – International Division	Release in part	s.22(1)(a)(ii) s.33(a)(iii) s.47C(1)
20.	01.06.2018	13	Email – International Division to FOI Reviews –	Release in part	s.22(1)(a)(ii) s.33(a)(iii) s.47C(1)
21.	25.06.2018	15	Email – International Division to FOI Reviews	Release in part	s.22(1)(a)(ii) s.33(a)(iii) s.47C(1) s.47E(d)
22.	29.06.2018	2	Email – FOI Review to decision maker	Release in part	s.22(1)(a)(ii)
23.	02.07.2018	3	Email – Media Operations to FOI Reviews	Release in part	s.22(1)(a)(ii)
24.	02.07.2018	3	Email – decision maker to FOI Reviews	Release in part	s.22(1)(a)(ii)
25.	03.07.2018	3	Email – FOI pending internal review decision alert	Release in part	s.22(1)(a)(ii)