



26 November 2019

Mr Michael Green

BY EMAIL: foi+request-5322-ce837968@righttoknow.org.au

In reply please quote:

FOI Request: FA 19/03/01208

File Number: OBJ2019/20257

Dear Mr Green,

Freedom of Information (FOI) request - Access Decision

On 22 March 2019, 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:

Documents relating to Australia's priorities in relation to the nationality, ethnicity or religion of persons resettled under Australia's offshore humanitarian program.

Please limit this to briefing papers, reports, guidance notes, policy documents and advice the senior officials and the Minister.

Please limit this request to only documents since 2013

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 that 20 documents fall within the scope of your request. These documents were in the possession of the Department on 22 March 2019 when your request was received.

5 Tranche Decisions

On 26 October 2019 an interim decision record was sent to you with the release of a number of documents. The documents previously released, along with the documents released to you today (documents 11, 13.1 and 14) with this final decision record will form the consolidated final decision on your application.

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

The statutory time limits for review of my decision on your request commence upon receipt of this final consolidated decision.

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 18 documents in part with deletions
- Release 2 documents in full

7 Reasons for Decision

Detailed reasons for my decision are set out below.

7.1 Section 22 of the FOI Act – deletion of exempt material

I find that those parts of the documents which contain information that does not serve the purpose of confirming, identifying, relating to or describing the regional and/or global priorities of the Special Humanitarian Program can reasonably be regarded as irrelevant to the scope of your request.

In acknowledging your application we also advised you of Departmental policy, which is that the personal details of officers who are not in the Senior Executive Service (SES), as well as the mobile and work contact details of SES staff which are contained in documents that fall within scope will be deleted. These details I find can also reasonably be regarded as irrelevant to the scope of your request.

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

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

Section 33(a)(iii) of the FOI Act permits the 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 FOI Guidelines provide that 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 information between them. The expectation of damage to international relations must be reasonable in 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.

Taking the preceding guidance into account in a review of the documents, I find that parts of the documents contain information given by or intended for international stakeholders that the Australian Government works closely with in framing its global and regional priorities for the Humanitarian Program. These international stakeholders include the United Nations High Commissioner for Refugees (UNHCR), State and Territory governments and Non-Government Organisations (NGOs). I consider that there is an important and ongoing requirement for the input of these and other international stakeholders to both frame the Humanitarian Program priority caseloads in future program years, and also to consult in relation to other operational matters of the program that may arise from time to time in any particular program year.

I consider that the relationship between the Australian Government and the international stakeholders is a long and enduring relationship that must maintain a solid foundation into the future for the successful formation and delivery of the Humanitarian Program. I find, therefore, that the release of the information marked 's.33(a)(iii)' in the documents would, or could reasonably be expected to, cause damage to the Australian Government's relationship with these stakeholders were this information to be released into the public sphere.

7.3 Section 34 of the FOI Act – Cabinet documents

The documents I have exempted under section 34(3) of the FOI Act contain information that would reveal a Cabinet deliberation or decision. I have conducted checks and believe that this information has not been officially disclosed.

7.4 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 a document is 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 likely to, prejudice the effectiveness of those methods or procedures.

Having regard to the FOI Guidelines, I consider that there is a reasonable expectation that release of parts of the documents will disclose an investigative method or procedure and a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure.

Based on the above, I therefore find that this part of the document is exempt under s.37(2)(b) of the FOI Act.

7.5 Section 47C of the FOI Act – Deliberative processes

Section 47C(1) of the FOI Act provides that a document is conditionally exempt if its release would disclose deliberative matter, which includes matter in the nature of, or relating to opinion, advice or recommendation that is obtained for, or prepared for, or recorded for a consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

I find that some documents, or parts of the documents, include correspondence that was developed during a consultative process. The documents in scope include the draft documents or talking points that are intended to guide discussions at forthcoming meetings which may or may not have taken place. I find that these types of documents, and other similar correspondence which record the collaborative notes of a consultative process are deliberative documents to which section 47C(1) applies.

I have considered whether any exceptions, per section 47C(2), apply to these documents or parts of documents and I am satisfied that these exceptions do not apply. I find that the documents are neither operational information for the purposes of section 8A, nor information that is purely factual.

I consider that the release of the documents, or some information within the documents, were it to be identified within the public sphere, particularly by international stakeholders who may have been represented in the meetings which are described in the documents, carries a reasonable risk that confusion or sensitivity may arise in relation to any matter discussed between the agency and those stakeholders were the deliberative account to differ from any final account of the document. I find that the Department's relationship, and need to engage at a high level with these international stakeholders, for the purposes of delivering the humanitarian program in each year, is too important to subject to any such risk. I find therefore that the Department's ability to deliver the humanitarian program may be significantly and adversely impacted by the release of these documents.

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.

Accordingly, I find that the documents are conditionally exempt under section 47C(1) 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.

7.6 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 release of parts of the documents marked 's.47E(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.

Parts of the documents contain counsel that has been provided to the Department by other stakeholders and partner agencies in the process of administering the Special Humanitarian Program in any program year, or in the process of composing the Special Humanitarian Program. These documents contain information that is integral to the operations of the program and which could severely compromise the Department's relationship with the stakeholder or agency that has assisted the Department with its operations if this information were to be released into the public sphere.

Additionally the documents contain information that is circulated within the department for other purposes, including risk rating and monitoring the Special Humanitarian Program, which may also compromise the Department's ability to deliver the program effectively were it to be misapplied or misrepresented.

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.

Accordingly, I find 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.

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

As I have decided that documents, or 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.

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

- I consider there to be a strong public interest in the Department being able to manage its programs effectively towards the attainment of strategic outcomes. In finding that these strategic outcomes may be undermined through potential damage to important stakeholder relationships through the release of conditionally exempt information marked 's.47C(1)', I therefore consider that the release of this information is not in the public interest.
- I consider there to be a strong public interest in the Department being able to manage its programs effectively towards the attainment of strategic outcomes. In finding that these strategic outcomes may be undermined through potential damage to important stakeholder relationships through the release of conditionally exempt information marked 's.47E(d)', I therefore consider that the release of this information is not 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 above 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.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. 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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

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

Position number 60081621

Authorised Decision Maker | Freedom of Information Section

FOI and Records Management Branch

Productivity and Compliance Division | Corporate and Enabling Group

Department of Home Affairs

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI Request: FA 19/03/01208
File Number: OBJ2019/20257

No.	Date of document	No. of pages	Description	Decision on release	
1.	29/10/2013	17	Submission no. SM2013/03258 to the Minister in relation to the 2013-2014 humanitarian program year	Partial	22(1)(a)(ii) 33(a)(iii) 47C(1)
2.	28/09/2013	22	Submission no. SM2013/03133 (Attachment to submission no. SM2013/03258)	Partial	22(1)(a)(ii) 33(a)(iii) 47C(1) 47E(d)
3.	(January) 2013	5	Letter from Immigration Minister to Foreign Minister re 13-14 program composition - SM2013/03258	Partial	22(1)(a)(ii) 33(a)(iii) 47C(1)
4.	-	1	Table of proposed UNHCR referrals required (13-14 program year)	Partial	47C(1)
5.	06/12/2013	4	Letter to the Director, Division of International Protection, UNHCR, regarding composition of the 13-14 humanitarian program year	Partial	22(1)(a)(ii)
6.	10/06/2014	31	Submission no. SM2014/01618 to Minister in relation to composition of the 2014-2015 humanitarian program	Partial	22(1)(a)(ii) 33(a)(iii) 47C(1)
7.	21/04/2015	9	Submission MS15-000608 to Minister re 14-15 and 15-16 program years	Partial	22(1)(a)(ii) 33(a)(iii) 47C(1)

No.	Date of document	No. of pages	Description	Decision on release	
8.	13/04/2018	5	Submission MS18-000448 to the Minister on a mid-year review of the 17-18 humanitarian program	Partial	22(1)(a)(ii) 34(3) 47C(1)
9.	-	2	Summary of the 2016-2017 humanitarian program	Full	
10.	-	6	Talking points – meeting with UNHCR	Partial	22(1)(a)(ii) 47C(1)
11.	20/11/2018	21	Submission MS18-009577 to the Minister re further advice on composition of the 2018-2019 humanitarian program	Partial	22(1)(a)(ii) 33(a)(iii) 34(3) 47C(1) 47E(d)
12.	-	2	Summary of the 2017-2018 humanitarian program	Full	
13.	11/10/2018	10	(Draft) Submission MS18-002133 to the Minister re the 2018-2019 humanitarian program	Partial	47C(1)
13.1	25/10/2018	1	(Draft) Submission MS18-002133 to the Minister re the 2018-2019 humanitarian program	Partial	47C(1)
14.	05/03/2019	83	Submission MS19-000623 to the Minister re mid-year review of the 2018-2019 humanitarian program	Partial	22(1)(a)(ii) 33(a)(iii) 37(2)(b) 47C(1) 47E(d)
15.	-	1	Allocations and delivery figures for the 2018-2019 humanitarian program	Partial	22(1)(a)(ii) 33(a)(iii)
16.	-	7	Talking points – meeting with UNHCR	Partial	47C(1)
17.	-	3	(Draft) Minutes of teleconference with UNHCR	Partial	22(1)(a)(ii) 47C(1)
18.	-	2	Talking points (referral requirements) meeting with UNHCR	Partial	47C(1)
19.	-	1	(Proposed) composition of the 2018-2019 humanitarian program	Partial	22(1)(a)(ii) 33(a)(iii) 47C(1)