



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA 14/03/00020

File Number ADF2014/7312

Scope of request

Incident Detail Report 1-2RIU6K from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.

Documents in scope

1. Incident Detail Report 1-2RIU6K – containing 5 folios.

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 departmental records.

Information considered

In reaching my decision, I have considered the following:

- the *Freedom of Information Act 1982*;
- departmental document (identified above);
- the Australian Information Commissioner's guidelines relating to access to documents held by government;
- the department's FOI handbook

Reasons for decision

I have considered the document within the scope of your request and applied exemptions in part as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of exempt or irrelevant material under s.22 of the FOI Act

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

The attached Schedule of Documents identifies where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

Conditional exemption - certain operations of agencies - s.47E(d)

A document is 'conditionally exempt' under s.47E of the FOI Act if its release, amongst other things, would or could reasonably be expected to 'have a substantial adverse effect on the proper and efficient conduct of an agency'. A conditionally exempt document **must** be released under the FOI Act unless the release would be 'contrary to the public interest'.

In my opinion the document listed in the Schedule as exempt, in part under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this department. Disclosure would therefore be 'unreasonable'.

I am satisfied that the release of the material I have deleted as exempt under section 47E is conditionally exempt under s.47E(d).

I must now consider the factors set out in the public interest test in s.11B(3) of the Act.

Factors favouring disclosure

I have considered the factors set out in s.11B(3) of the Act.

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against disclosure

The AIC has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the Act.

I consider that the following factors are relevant to the document in question:

- reveal operating procedures, the release of which would require the department to change the way it operates.
- provide an unfair advantage to future clients if the operations of the department are known.
- prejudice the operations of the department in dealing with self-harm in detention centres.

On balance, I am satisfied that release of the information in the document would be contrary to the public interest and that the document is exempt under section 47E of the FOI Act.

Having reached that view, s.22(2) of the FOI Act requires me to provide you with an edited copy of the documents, with the exempt information deleted under s.22(1)(b).

Conditional exemption – personal information - s.47F(1)

A document is 'conditionally exempt' under s.47F(1) of the Act if its release would 'involve the unreasonable disclosure of personal information about any person (including a deceased person)'. A conditionally exempt document **must** be released under the FOI Act unless the release would be 'contrary to the public interest'. The Act requires me to undertake a two step process in deciding if an exemption applies.

Would the disclosure be an 'unreasonable' disclosure of personal information?

The exemption in s.47F(1) of the Act will only apply if I am satisfied that the disclosure would involve 'unreasonable' disclosure of a third party's personal information. The Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I 'must' have regard to the factors set out in s.47F(2) of the Act:

- (a) the extent to which the information is well known;
- (b) 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;
- (c) the availability of the information from publicly available resources;
- (d) any other matters that I consider relevant.

I have considered each of these elements separately below.

(a) Extent to which the information is known

Although the summary of the incident detail report is known, the identity of the individual involved is not in the public domain. On balance, I believe that the factor weights in favour of the disclosure being unreasonable.

(b) Whether the person to whom the information relates is known to be associated with the matters in the document

The individual to whom the information relates is not in the public domain. On balance, I believe that the factor weights in favour of the disclosure being unreasonable.

(c) The availability of the information from publicly available sources

Although the summary of the incident detail report is known, a copy of the full incident report, in particular the identity of the individual involved is not in the public domain. On balance, I believe that the factor weights in favour of the disclosure being unreasonable.

(d) Any other matters that the agency considers relevant

The information is not your personal information. This weighs against the release being reasonable.

Every person has the right to expect that their personal information will be securely maintained by the department. This weighs against the release being reasonable.

No purpose would be achieved by releasing the third party personal information. This weighs against the release being reasonable.

The current relevance of the information; this weighs against the release being reasonable.

On balance, I believe that the factors weigh in favour of the disclosure being unreasonable.

After considering each element in s.47F(2), I am satisfied that disclosure of the personal information would be an 'unreasonable' disclosure of personal information.

Therefore, I am satisfied that the information I have identified in the relevant documents is 'conditionally exempt' under s.47F(1) of the Act.

I must now consider the factors set out in the public interest test in s.11B(3) of the Act.

Factors favouring disclosure

I have considered the factors set out in s.11B(3) of the Act..

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Factors weighing against disclosure

The AIC has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the Act.

I consider that these factors are relevant to the documents in question:

The disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy.

It is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

On balance, I am satisfied that the disclosure of the information I have identified as 'personal information' would amount to an 'unreasonable disclosure of personal information'. Further, I am satisfied that the release of the personal information in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the personal information in the documents is exempt from release under section 47F(1) of the Act.

Having reached that view, s.22(2) of the FOI Act requires me to provide you with an edited copy of the documents, with the exempt information deleted under s.22(1)(b).



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Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 04/03/00020

File Number ADF2014/7312

1. Incident Detail Report 1-4QHBD8

Folio	Description	Decision	Legislation
1 - 5	Information that is irrelevant to the scope of the request.	Exempt in part.	s.22(1)(a)(ii)
2 - 5	Information relating to third party personal information.	Exempt in part.	s.47F(1)
2	Information relating to the operation of an agency.	Exempt in part.	s.47E(d)

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Attachment C

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) 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;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of *qualified person* in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).