



Australian Government
Department of Immigration and Border Protection

FOI Request FA 14/04/00093-R1
File Number ADF2014/11552

16 June 2014

Mr Ben Fairless

By email:
foi+request-574-d9d010ea@righttoknow.org.au

Dear Mr Fairless

Freedom of Information request – Decision internal review

This letter refers to your request under s.54(2) of the *Freedom of Information Act 1982* (the Act) for internal review of a decision on Friday 9 May 2014 by Mr Kenneth Truelsen (our reference: FA 14/04/00093).

Mr Truelsen's decision was in response to your request to the Department of Immigration and Border Protection (the Department) under s.15 of the Freedom of Information Act 1982 (the Act) for:

'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.'

Mr Truelsen released the document he identified as falling within the scope of your request. Mr Truelsen deleted information that he was satisfied was exempt under s.47F(1) of the Act. He also deleted information that he considered irrelevant to your request, under s.22(1)(a)(ii) of the Act. This meets the definition of an 'access refusal decision' in the Act.

The Department received your internal review request on Thursday 15 May 2014. Section 54C(3) of the Act provides that the review officer must make a 'fresh decision' on the original request rather than conducting a review of the merits of the original decision. Section 54C(3) also provides that the decision must be made 'within 30 days after the day on which the application was received by...the agency'.

Therefore, under the (FOI) Act, I must make the decision by Saturday 14 June 2014. However, as this is non-working day, s.36(2) of the *Acts Interpretation Act 1901* (Cth) provides that the Department may provide the decision on the next working day, which is **Monday 16 June 2014**.

On Friday 30 May 2014, I advised you that I had been appointed as the internal review

people our business

6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone 02 6264 1111 • Facsimile 02 6225 6970 • Website: www.immi.gov.au

officer and that I considered your request to be a valid internal review request under the Act.

This letter is to inform you that I have finalised the internal review and to provide you with my decision, the reasons for the decision and the relevant documents. The attached Decision Record and Schedule of Documents, when read together, form the written reasons for my decision as required under s.26 of the Act.

Review Rights - 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 my decision. If you wish to apply for review directly to the OAIC you must apply in writing within **60 days** of this notice. You can lodge your application in one of the following ways:

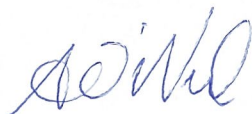
Post	GPO Box 2999, CANBERRA ACT 2601
or	GPO Box 5218, SYDNEY NSW 2001
Online	www.oaic.gov.au
Email	enquiries@oaic.gov.au
Fax	+61 2 9284 9666
In person	Level 3, 25 National Circuit FORREST ACT
or	Level 3, 175 Pitt Street SYDNEY NSW

For more information please see FOI Fact Sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

How to make a complaint about the handling of your FOI request

You may complain to the Information Commissioner if you have concerns about how the Department has handled your request under the Act. Please contact the OAIC for details of how to do so. If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Angela O'Neil
 Authorised decision maker
 Freedom of Information & Privacy Policy Section
 Department of Immigration & Border Protection

Telephone 02 6264 1382
 Email foi@immi.gov.au

Attachments

- A - Decision Record
- B - Schedule of Documents
- C - Extract of relevant legislation
- D - Released document



Australian Government
Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Details

FOI Request FA 14/04/00093-R1
File Number ADF2014/11552

The scope of your original request

In your original request you sought access under the Act to the following document:

'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.'

Document in scope

The Department holds 1 document that is scope, titled 'Incident Detail Report'. The document does not include any attachments. The document is listed in the Schedule of Documents attached to this decision.

The Department's response to your FOI request

On Friday 9 May 2014, the decision maker, Mr Kenneth Truelsen released the 'Incident Detail Report' to you. Mr Truelsen deleted information that he believed was exempt under s.47F(1) of the Act. He also deleted information that he considered irrelevant to your request, under s.22(1)(a)(ii) of the Act. This meets the definition of an 'access refusal decision' in the Act

Your request for review

On Tuesday 20 May 2014, you emailed the Department, requesting:

'I am writing to request an internal review of Department of Immigration and Border Protection's handling of my FOI request 'FOI Request for Detail Incident Report 1-2RIU6K' for the following reasons:

\\ s.47F(1) Exemption //

The Decision Maker as refused access to the below fields under a s.47F(1) exemption:

- Participation Type*
- Minor (Y/N)*
- Client was Armed (Y/N)*
- Comments*

I contend that the release of the above information is not "Personal Information" as it does not provide the ability for a member of the public to identify an individual from this information.

people our business

6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone 02 6264 1111 • Facsimile 02 6225 6970 • Website: www.immi.gov.au

The Department also seeks to censor on page 2 a location, which I assume to be an Immigration Department facility. I contend that the release of this information will not allow the client to be identified.

As the information will not allow the individual to be identified, I contend that a s.47F(1) does NOT apply in relation to the above material.

\\ s. 22(1)(a)(ii) Exemption //

The decision maker has exempted material which he identifies as not being relevant to my request. As my request was for the Incident Report, and the Incident Report is what was provided, there is no reason to exempt any material as irrelevant.

I contend that the information withheld under s.22(1)(a)(ii) should be released on the basis that it is not exempt.

\\Summary//

I remind the Department of its obligations to respond as soon as practical, but no later than 30 days from today. I respectfully request that the Department issue a decision as soon as practical.'

By email dated Friday 30 May 2014, I advised you that I interpreted your request to be that the decision maker:

1. did not correctly interpret and apply s.47F(1) of the Act to the information in the document; and
2. did not interpret the scope of your request correctly and so incorrectly deleted information under s.22(1)(a)(ii) of the Act that was relevant to the scope of your request.

Decision and reasons for decision

I am authorised under Section 23 of the *Freedom of Information Act 1982* (the Act) to make a decision on your FOI request for internal review of the decision made by Mr Truelsen on Friday 9 May 2014. My role is to make a fresh decision (s.54C(3) of the Act), taking into account the relevant information.

I have considered the information on the Incident Report 1-2RIU6K (dated 16 November 2009) and have deleted information where I consider that is exempt under the Act. In reaching my decision, I have considered the following:

- your views and advice;
- the Act;
- the FOI Guidelines published by the Office of the Information Commissioner (IC Guidelines);
- the views of relevant third parties; and
- advice from the relevant business areas within the Department.

Prior to explaining my reasons for applying the exemptions to the documents, I thought it would assist if I explained the operation of s.22 to deleting exempt or irrelevant material.

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

Section 22(2) of the 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 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 Act.

In relation to the Incident Report, I consider that the metadata at the base of each page is irrelevant to your request. However, as there is no harm from the release of this information, I have decided that I will not delete it under s.22(1)(a)(ii) of the Act.

Conditionally exempt documents

The documents I have considered fall under a range of ‘conditional’ exemptions in the Act. Therefore, I will explain what a ‘conditionally exempt’ document is before discussing the individual exemptions I have applied.

The Act was amended in November 2010 to impose a new public interest test on all ‘conditionally exempt’ information, including personal information. The Act now provides that ‘conditionally exempt’ information must be released unless the decision maker reaches the view that release of the information would be ‘contrary’ to the public interest.

The public interest test

Factors weighing in favour of release

In weighing up the public interest test, s.11B(3) of the Act states that a decision maker **must** consider whether disclosure of the personal information would:

- (a) promote the objects of the Act; or*
- (b) inform debate on a matter of public importance; or*
- (c) promote effective oversight of public expenditure; or*
- (d) allow a person to access his or her personal information.*

The objects of the Act, set out in s.3(1) are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia’s representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government’s activities

Factors weighing against release

The Act does not contain any factors ‘against’ disclosure. However, the Act states that, if the Australian Information Commissioner has issued Guidelines (IC Guidelines) that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the Act).

The Information Commissioner has since issued Guidelines that contain a **non-exhaustive** list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release ‘conditionally exempt’ information (paragraph 6.29 of the IC Guidelines).

The elements that weigh against disclosure are:

Whether disclosure of the personal information could reasonably be expected to:

- (a) prejudice the protection of an individual’s right to privacy, including where:*
 - i. the personal information is that of a child, where the applicant is the child’s parent, and disclosure of the information is reasonably considered not to be in the child’s best interests*
 - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person’s household) and the disclosure of the information could reasonably be expected to affect the deceased person’s privacy if that person were alive.*
- (b) prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) prejudice security, law enforcement, public health or public safety*
- (d) impede the administration of justice generally, including procedural fairness*
- (e) impede the administration of justice for an individual*
- (f) impede the protection of the environment*
- (g) impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) prejudice an agency’s ability to obtain confidential information*
- (i) prejudice an agency’s ability to obtain similar information in the future*
- (j) prejudice the competitive commercial activities of an agency*
- (k) harm the interests of an individual or group of individuals*
- (l) prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) prejudice the management function of an agency*
- (n) prejudice the effectiveness of testing or auditing procedures*

I will now consider the conditional exemption that I have applied in my decision.

s. 47F - Personal information

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'. Section 4(1) of the Act defines 'personal information' to be:

personal information means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

For information or documents to be exempt under this provision, the information in the documents must meet the definition of 'personal information' in s.4(1) of the Act and I must be satisfied that the release of the information is 'unreasonable'.

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

The information I have identified as personal information is not well known.

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

The person to whom the information relates is not known to be associated with the matters in the document.

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

The information is not available from public sources.

(d) Any other matters that the agency considers relevant

While a general member of the public might not be able to connect this incident report and the personal information on it with the relevant individual, release under the Act is release to the world at large. I am satisfied that the individual concerned, along with any family members or other people in detention with the person at the time would be

able to identify that they are the person in question.

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

Therefore, I am satisfied that the conditional exemption in s.47F(1) of the Act applies to the personal information in the incident report. As a result, I must consider the application of the public interest test in s.11B of the Act to determine whether the release of the information in the documents would be 'contrary to the public interest'.

Factors favouring disclosure

I have considered, below, the factors as set out in s.11B(3) of the Act, discussed previously.

I am satisfied that the release of the documents would promote the objects of the Act as it would provide access to information held by Government and that this factor weighs in favour of the release not being 'contrary to the public interest'.

However, I am satisfied that the release of the personal information contained in the incident report would not have any bearing on or relevance to any matter of public debate. Therefore this factor does not weigh in favour of release. Further, I am satisfied that the release of the incident report is irrelevant to the effective oversight of public expenditure. Therefore, this factor does not weigh in favour of release. Finally, the release of the incident report would not allow you to access your own information. This factor does not weigh in favour of release. In summary, only the first public interest factor weighs in favour of release.

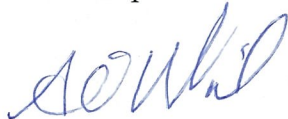
Factors weighing against disclosure

As discussed previously, the IC 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 this factor is relevant to the personal information in the incident report:

- prejudice the protection of an individual's right to privacy;

I have accorded this factor significant weight. Therefore, on balance I am satisfied that releasing the personal information in the incident report would be contrary to the public interest and that the information I have deleted in the document under section 47F(1) of the Act is exempt from release under the Act.



Angela O'Neil
Assistant Director
Freedom of Information and Privacy Policy Section
Department of Immigration and Border Protection

16 June 2014



Australian Government
Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/04/00093-R1
File Number ADF2014/11552

Document Number	Page number	Description	Decision	Legislation
1	1-2	Incident Detail Report – 1-2RIU6K – 16 November 2009	Release with exempt material deleted	s.47F(1) s.22(1)(a)(i)



Australian Government
Department of Immigration and Border Protection

Attachment C

EXTRACT OF RELEVANT LEGISLATION

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include 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.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

- (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.

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.
- ...

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and

- (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

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

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

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.

...

54 Internal review—access refusal decision

- (1) This section applies if an access refusal decision is made in relation to a request to an agency for access to a document, other than a decision made personally by the principal officer of the agency or the responsible Minister.
- (2) The applicant in relation to the request may apply under this Part for the review (the *internal review*) of the access refusal decision.

54B Internal review—application for review

- (1) An application for internal review must be in writing and must be made:
 - (a) within 30 days, or such further period as the agency allows, after the day the decision is notified to the applicant for internal review (the *internal review applicant*); or

- (b) in the case of an access refusal decision of a kind mentioned in paragraph 53A(b), (c) or (f), within whichever of the following is the longer period:
 - (i) 30 days, or such further period as the agency allows, after the day the decision is notified to the internal review applicant;
 - (ii) 15 days after the day the access referred to in that paragraph was given (or purported to be given).

...

54C Internal review—decision on internal review

Scope

- (1) This section applies if an application for internal review of an access refusal decision or an access grant decision (the *original decision*) is made in accordance with this Part.

Decision

- (2) The agency must, as soon as practicable, arrange for a person (other than the person who made the original decision) to review the decision.
- (3) The person must make a fresh decision on behalf of the agency within 30 days after the day on which the application was received by, or on behalf of, the agency.

Notice of decision

- (4) Section 26 extends to a decision made under this section.