



3 June 2020

Mr M Green

**BY EMAIL:** [foi+request-5991-bd8a7f7f@righttoknow.org.au](mailto:foi+request-5991-bd8a7f7f@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 19/12/00646

File Number: OBJ2019/62080

Dear Mr Green

**Freedom of Information (FOI) request - Access Decision**

On 11 December 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:

- PDMS Ref. Number MS18-009577, with the subject, 'Further advice on the composition of the 2018-19 Humanitarian Program'
- PDMS Ref. Number MS19-000623, with the subject, 'Mid-Year Review of the 2018-19 Humanitarian Program'
- PDMS Ref. Number MS15-000608, with the subject, 'Review of Australia's commitment to protection of refugees and displaced persons, and delivery of the Humanitarian Programme for 2014-15 and 2015-16'
- PDMS Ref. Number MS18-000448, with the subject, 'Mid-Year Review of the 2017-2018 Humanitarian Programme'
- letter dated 6 December 2013, from Wendy Southern PSM, Deputy Secretary, to the Director, Division of International Protection at the United Nations High Commissioner for Refugees
- document entitled 'Humanitarian Programme-Meeting with UNHCR Division of International Protection - Friday 20 October 2017.' This document could be described as talking points for the meeting.

- document entitled '2018-19 Humanitarian Program Allocations and Delivery'
- Submission number SM2013/03258, with the subject 'Management of the offshore component of the 2013-14 Humanitarian Programme'
- Submission number SM2013/03133, with the subject 'Management of the offshore component of the 2013-14 Humanitarian Programme'
- Submission number SM2014/01618, with the subject, 'Composition of the 2014-15 offshore Humanitarian'

## **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 10 documents as falling within the scope of your request. These documents were in the possession of the Department on 11 December 2019 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 10 documents in part with deletions

## **6 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.

## **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, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 13 December 2019, 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 documents 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 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.

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. 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 34 – Cabinet documents**

Section 34(1)(c) of the FOI Act permits exemption of a document if it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies

At the time the documents were created, they were brought into existence for the dominant purpose of briefing the Minister for Home Affairs on a submission to Cabinet.

A strong Cabinet system is fundamental to well-informed decision making and policy development by the Government. The convention of the collective responsibility of Ministers for government decisions is central to the Cabinet system of Government. Cabinet is a forum in which Ministers, while working towards a collective position, are able to discuss proposals, options and views with complete freedom. This requires that Cabinet deliberations are treated confidentially.

The documents contain information which, if disclosed, would reveal Cabinet deliberations and information that has not, to date, been officially disclosed. Accordingly, I am satisfied that the documents are exempt under section 34(1)(c) and 34(3).

### **6.4 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 be reasonably likely to prejudice the effectiveness of those methods or procedures.

I consider that parts of document number 9 would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting breaches or evasions of the law and that disclosure would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

It is noted that the Department's role includes managing the security and integrity of Australia's borders. The Department leads the management of risks to Australia's border in close collaboration with other government agencies, including State and Federal law enforcement agencies. As such, the Department's role includes law enforcement functions.

The disclosure of information within these documents would be reasonably likely to impact on ongoing investigative methodology and relationships both domestically and internationally that support Australian government investigative capabilities. The release of this information would prejudice the effectiveness of those methods or procedures, assisting endeavours to evade them and thereby reducing the ability of the Department and other law enforcement agencies to protect the borders of Australia.

I have decided that this information is exempt from disclosure under Section 37(2)(b) of the FOI Act.

## 6.5 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 relating to the deliberative processes involved in the functions of the Department.

'*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*' generally involves "*the process of weighing up or evaluating competing arguments or considerations*"<sup>1</sup> and the '*thinking processes –the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.*'<sup>2</sup>

The document contains 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. I am satisfied that this deliberative matter relates to a process that was undertaken within government to consider whether and how to make or implement a decision, revise or prepare a policy, administer or review a program, or some similar activity.<sup>3</sup>

Disclosure of this deliberative information could reasonably be expected to inhibit full and frank advice from the Department to its Minister, and, as a result, full consideration by the Government on any potential future consideration of amendments to legislation. Disclosure of some deliberative information, on which a decision has not yet been taken, could also reasonably be expected to prejudice consultations with relevant stakeholders.

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

## 6.6 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 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

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<sup>1</sup> *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

<sup>2</sup> *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67

<sup>3</sup> *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962

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.

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.

### **6.7 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 have the character of public importance and that there may be broad public interest in the documents..
- 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 Departments across government to provide full and honest advice to stakeholders in future proposals to legislative amendments.
- A Ministerial submission plays an important role in the relationship between a Department and its Minister. Its purpose is to provide frank and honest advice. It is inherently confidential between the Department and its Minister and the preparation of a Ministerial submission is essentially intended for the audience of that Minister alone. A precedent of public disclosure of advice given as a part of a Ministerial submission would result in:
  - concerns existing in the open and honest nature of advice being provided which may then hinder future deliberations and decision making processes for the Department and the Government as a whole and
  - future Ministerial submissions being prepared with a different audience in mind, which would compromise the quality of the advice being prepared for the Minister.
- I consider that the public interest in protecting the process of the provision of free and honest confidential advice by a Department to its Minister has, on balance, more weight, than the public interest that might exist in disclosing the deliberative matter. Endangering the proper working relationship that a Department has with its Minister and its ability to provide its Minister with honest advice confidentially would be contrary to the public interest.
- law enforcement – ABF's ability to protect the border - disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice law enforcement functions and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its law enforcement functions is not compromised or prejudiced in any way. I consider that this 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/Series/C2004A02562>. 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](mailto: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>.

## 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](mailto: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](mailto:foi@homeaffairs.gov.au) .

Position Number 60097486  
Authorised Decision Maker  
Freedom of Information Section  
Department of Home Affairs

**ATTACHMENT A**

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

FOI request: FA 19/12/00646

File Number: OBJ2019/62080

No.	Date of document	No. of pages	Description	Decision on release	
				Decision	Exemption
1.	-	22	SM2013-03133	Exempt in part	s47C(1) s33(a)(iii) s47E(d) s22(1)(a)(ii)
1.1	-	-	Attachment A	Exempt in part	s47C(1) s33(a)(iii)
1.2	-	-	Attachment B	Exempt in part	s47C(1) s33(a)(iii)
1.3	-	-	Attachment C	Release in full	-
1.4	-	-	Attachment D	Exempt in full	s47C(1)
2.	-	31	SM2014-01618	Exempt in part	s47C(1) s33(a)(iii) s22(1)(a)(ii) s38(1)
2.1	-	-	Attachment A	Exempt in part	s47C(1) s33(a)(iii)
2.2	-	-	Attachment B	Exempt in full	s33(a)(iii)
2.3	-	-	Attachment C	Released in full	-
3.	-	9	MS15-000608	Exempt in part	s33(a)(iii) s22(1)(a)(ii)
3.1	-	-	Attachment A	Exempt in part	s47C(1) s33(a)(iii)
3.2	-	-	Attachment B	Exempt in part	s33(a)(iii)
4.	-	17	SM2013-03258	Exempt in part	s33(a)(iii) s47C(1) s22(1)(a)(ii)
4.1	-	-	Attachment A	Exempt in full	s24A(1)

No.	Date of document	No. of pages	Description	Decision on release	
4.2	-	-	Attachment B	Exempt in part	s33(a)(iii) s47C(1)
4.3	-	-	Attachment C	Exempt in full	s24A(1)
4.4	-	-	Attachment D	Exempt in part	s33(a)(iii) s47C(1)
5.	6 December 2013	4	Wendy Southern Letter	Exempt in part	s22(1)(a)(ii)
6.	-	5	MS18-000448	Exempt in part	s47C(1) s34(3)
7.	-	21	MS18-009577	Exempt in part	s47C(1) s38(1) s33(a)(iii) s47E(d) s34(3) s34(1)(c) s22(1)(a)(ii)
7.1	-	-	Attachment A	Exempt in part	s47C(1) s33(a)(iii) s47E(d)
7.2	-	-	Attachment B	Exempt in part	s47C(1) s38(1)
7.3	-	-	Attachment C	Exempt in part	s47C(1) s38(1)
7.4	-	-	Attachment D	Exempt in full	s24A(1)
7.5	-	-	Attachment E	Exempt in part	s33(a)(iii)
7.6	-	-	Attachment F	Exempt in full	s33(a)(iii)
7.7	-	-	Attachment G	Exempt in full	s34(1)(c)
7.8	-	-	Attachment H	Exempt in full	s47E(d)
7.9	-	-	Attachment I	Release in full	-
8.	20 October 2017	6	Humanitarian Program Meeting	Exempt in part	s47C(1)

No.	Date of document	No. of pages	Description	Decision on release	
9.	-	41	MS19-000623	Exempt in part	s33(a)(iii) s47C(1) s37(2)(b) s22(1)(a)(ii) s 33(b) s47E(d) <5 in table greyed out on page 6
9.1	-	-	Attachment A – 2018-19 Humanitarian Program Allocations	Exempt in part	s33(a)(iii)
9.2	-	-	Attachment B - 2018-19 Humanitarian Program Allocations and Delivery	Exempt in part	s33(a)(iii)
9.3	-	-	Attachment C – Chins snapshot	Exempt in part	s47C(1) s33(a)(iii)
9.4	-	-	Attachment D - MS18-009577 (provided above)	-	-
9.5	-	-	Attachment E - MS18-01094	Exempt in part	s47C(1) s33(b) s47E(d) s22(1)(a)(ii)
9.6	-	-	Attachment F – MS18-002575	Exempt in part	s47C(1) s33(a)(iii) <5 in table greyed out on page 26 s22(1)(a)(ii)
10.	-	1	2018-19 Humanitarian Program Allocations and Delivery	Exempt in part	s33(a)(iii)