



20 February 2020

Mr M Green

BY EMAIL: foi+request-6000-a9bf0f77@righttoknow.org.au

In reply please quote:

FOI Request: FA 19/12/00662

File Number: OBJ2019/62118

Dear Mr Green

Freedom of Information (FOI) request - Access Decision

On 12 December 2019, the Department of Home Affairs (the Department) received a request for access to a document 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 document:

Under the FOI Act please provide the minutes of the department's NGO dialogue from 2019.

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 document 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)
- consultation responses from third parties consulted in accordance with the FOI Act
- advice from departmental officers with responsibility for matters relating to the document to which you sought access.

4 Document in scope of request

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 12 December 2019 when your request was received.

5 Decision

The decision in relation to the document in the possession of the Department which falls within the scope of your request is as follows:

- Exempt one document in full from disclosure.

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 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 (section 47C(1)):

"...opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes of: (a) an agency; or (b) a minister; or (c) the Government of the Commonwealth".

'Deliberative processes' generally involve "the process of weighing up or evaluating competing arguments or considerations"¹ 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.'²

In applying this exemption, I have taken note of the purposes of the NGO Dialogue:

While not a formal decision making body, the Home Affairs-NGO Dialogue on Refugee and Humanitarian Issues (the 'NGO Dialogue') is a key forum for constructive collaboration between the Department of Home Affairs (the 'Department') and NGOs in the refugee and humanitarian sector.

The NGO Dialogue provides a valuable, regular opportunity to exchange knowledge and expertise on policies, programs, services and practice and to identify issues and opportunities for the Department and NGOs. The ongoing, open and respectful dialogue facilitated by this forum supports the development and strengthening of long-term relationships and networks.

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

² JE Waterford and Department of Treasury (No 2) [1984] AATA 67

The Department values the expertise and insights contributed by NGOs, with the views of NGOs being an important aspect to inform policy and program development and practice. NGOs value the ability to communicate directly with senior officials from relevant areas within the Department (and other invited agencies) in areas of mutual interest.

I consider that the document contains advice, opinions and recommendations prepared or recorded in the course of, or for the purposes of, consultation as part of the deliberative processes involved in the functions of Department. These functions concern, in this instance, the development and implementation of policies and programs in humanitarian and refugee matters. The deliberations cover specific policies and programs but may also have implications for humanitarian and refugee matters broadly conceived.

Although the NGO Dialogue includes parties external to the Department, I am satisfied that this deliberative matter represents an important part of the processes undertaken within government to consider whether and how to revise or prepare policies, or to administer or review programs.³

Disclosure of this deliberative information could reasonably be expected to inhibit full and frank advice to the Department and, ultimately, to the Minister. As a result, disclosure of this information has implications for the Government's ability to undertake full and properly informed consideration of potential changes to legislation, policies and their implementation and administration.

Section 47C(2) provides that "deliberative matter" does not include purely factual material. I have had regard to the fact that "purely factual material" does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.⁴ A factual summary prepared to aid a complex issue may be classed as purely factual material but may also be of a character as to disclose a process of section involving opinion, advice or recommendation. As such, a conclusion which involves a deliberative process may well prevent material from being purely factual.⁵

I am further satisfied that the factors set out in subsection (3) do not apply in this instance.

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.

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

As I have decided that the document is 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 document or part of a document that 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.

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

⁴ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

⁵ *Harris v Australian Broadcasting Corporation and Others* (1984) 1 FCR 150

In summary, the test is whether access to the conditionally exempt document or 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 document would promote the objects of the FOI Act.
- I consider that the subject matter of the document may have the character of public importance, as it relates to an area of public policy that has a high public profile and important effects on the Australian community. This assessment should be qualified, however, by noting that the many of the specific matters discussed in the document appear to be somewhat limited in scope and, in my view, would be of interest only to a relatively narrow section of the public.
- I consider that, although the document refers to the public expenditure in particular matters, the information is not likely to provide insights into public expenditure that is not otherwise already publicly available.
- I am satisfied that you do not require access to the document 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 document:

- The value of the NGO Dialogue lies in providing a forum for free and open discussion of various matters, policies and programs that relate to humanitarian and refugee issues, to inform and assist the Department in the development, implementation and administration of legislation, policies and programs. Participants enter the NGO Dialogue with the reasonable expectation that any such matters can be raised and discussed confidentially and in a full and frank manner. As such, there is a reasonable expectation that a precedent of release of the NGO Dialogue's minutes, exposing the matters discussed, would reduce the value of the forum:
 - by discouraging current and future participants from engaging fully in the forum; and
 - by encouraging discussions being oriented towards a possible public audience and away from the intended audience, that is, the other participants, the Department, and ultimately the Minister and the Government.

- I consider that a real and substantial public interest exists in protecting the Department's ability to communicate with and consult stakeholders properly and thoroughly in matters relevant to functions. The public interest in preserving the confidentiality of this consultation has, on balance, more weight than the public interest that might exist in disclosing it. Endangering the relationship that the Department has developed with stakeholders to facilitate a full and useful exchange of information, views and advice would be contrary to 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 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 document 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

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

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

[Electronically signed]

**Position no. 60008303
Authorised Decision Maker
Department of Home Affairs**