



17 March 2020

Asher Hirsch

BY EMAIL: foi+request-6081-97363faf@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/01/00660

File Number: OBJ2020/1905

Dear Asher Hirsch,

Freedom of Information (FOI) request - Access Decision

On 17 January 2020 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:

Any documents discussing the likelihood of Safe Haven Enterprise Visa holders meeting the SHEV pathway requirements. Please include briefings, memos, reports and other advice. Please exclude email communications. Please limit this request to documents from 2016 to 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 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 7 documents as falling within the scope of your request. These documents were in the possession of the Department on 17 January 2020 when your request was received.

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 7 documents in part with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

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

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

I have decided to prepare an edited copy of the documents. The grounds upon which the edited copies of these documents have been prepared are set out in Attachment A.

The documents contain both personal and contact details of departmental officers and other information which can reasonably be regarded as not being relevant to the nature of scope, being pathway requirements for Safe Haven Enterprise Visa (SHEV) holders.

I have therefore decided that these 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 and have prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

6.2 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 draft documents or talking points that are intended to guide internal discussions or deliberations about the policy and operations of a visa program. 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.

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.

6.3 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 the documents would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

The documents contain information which overviews and may also inform the operation of assessment processes for the SHEV program. The release of this information into the public domain may expose parts of the assessment process to undue risks of being circumvented or undermined.

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.

6.4 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 an insight 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 parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act, which include information about visa assessment processes and policy may enable applicants to undermine or circumvent certain processes in the future. This would result in the Department having to continually change its processes at a cost to the Department. I have given this the consideration weight and believe that releasing this information would strongly be contrary to the public interest.
- Disclosure of conditionally exempt information under section 47C(1) could reasonably be expected to prejudice the ability of the Department to manage its programs effectively towards the attainment of strategic outcomes. I consider there to be a strong public interest in the Department being able to manage its programs as effectively and efficiently as possible and 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 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/Details/C2017C00251>. 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 <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

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.

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 20/01/00660

File Number: OBJ2020/1905

No.	Date of document	No. of pages	Description	Decision on release	
				Partial	Exemption
1.	November 2017	5	Policy options for resolving the Illegal Maritime Arrivals Legacy Caseload	Partial	47C(1)
2.	October 2018	10	Safe Haven Enterprise Visa: "Pathway" Assessments – Policy paper discussing issues and possible options	Partial	22(1)(a)(ii) 47C(1) 47E(d)
3.	February 2019	4	Briefing note – Safe Haven Enterprise Visa	Partial	22(1)(a)(ii) 47C(1) 47E(d)
4.	29 November 2019	55	RD/CLO Talking Points	Partial	22(1)(a)(ii) 47E(d)
5.	-	7	Talking Points: The Safe Haven Enterprise Visa	Partial	22(1)(a)(ii) 47E(d)
6.	-	1	Internal document	Partial	22(1)(a)(ii)
7.	-	5	Talking Points: The Safe Haven Enterprise Visa	Partial	22(1)(a)(ii) 47E(d)