



6 July 2020

Ms Louise Boon-Kuo

BY EMAIL: foi+request-6111-498e4e79@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/01/01226

File Number: OBJ2020/03207

Dear Ms Boon-Kuo

Freedom of Information (FOI) request - Access Decision

On 31 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 information, records, paper documents, electronic records (or their contents) held or accessible by the Department of Home Affairs (‘DHA’) in relation to the activities of officers (including Electronic Examination officers) or Immigration and Border Protection workers (all collectively referred to as ‘officers’ for the purpose of this request) under the Customs Act 1901 (Cth) or Migration Act 1958 (Cth) or Australian Border Force Act 2015 (Cth) in the examination, copy of contents, extraction of data from, and retention of, mobile phones or other digital devices at the airport, specifically:

1. Any documents including policies, procedures, checklists, protocols or pro forma templates in databases (including the Customs document management system and the pro forma template forms for Information Reports and BAGS reports) guiding the activities of officers in the examination, copy of contents, extraction of data from, and retention of, mobile phones or other digital devices.

2. Any training materials or explanatory documents produced for officers explaining the meaning of provisions under s 186 or s 186A of the Customs Act 1901 (Cth) or s 252 of the Migration Act 1958 (Cth); explaining the authority of officers to examine, copy contents or extract data from or retain mobile phones or other digital devices; or guiding officers in the appropriate use of these powers.

3. *Any documents including policies, procedures, protocols, checklists, or proforma templates or forms in databases guiding or triggering officers to use XRY software to examine and analyse the contents of mobile phones and other digital devices at the airport.*

4. *Any documents, guidelines or protocols concerning how an alleged breach of migration or customs law that has been identified by examination of a digital device and/or associated action such as interview at the airport is to be dealt with by the DHA or other body (for example, the Australian Federal Police or the Commonwealth Director of Public Prosecutions) when the alleged conduct also amounts to a criminal offence.*

5. *The total number of mobile phones:*

a. *examined under s 186 of the Customs Act 1901 (Cth) in the period 1 July 2009-30 June 2019, broken down by fiscal year and country of citizenship or nationality.*

b. *examined under s 252 of the Migration Act 1958 (Cth) in the period 1 July 2009-30 June 2019, broken down by fiscal year and country of citizenship or nationality.*

c. *in which officers have made a copy or taken an extract from the device under s 186A of the Migration Act 1958 (Cth) in the period 1 July 2009-30 June 2019, broken down by fiscal year and country of citizenship or nationality.*

6. *The total number of electronic devices other than mobile phones:*

a. *examined under s 186 of the Customs Act 1901 (Cth) in the period 1 July 2009-30 June 2019, broken down by fiscal year and country of citizenship or nationality*

b. *examined under s 252 of the Migration Act 1958 (Cth) in the period 1 July 2009-30 June 2019, broken down by fiscal year and country of citizenship or nationality.*

c. *in which officers have made a copy or taken an extract from the device under s 186A of the Migration Act 1958 (Cth) in the period 1 July 2009-30 June 2019, broken down by fiscal year and country of citizenship or nationality.*

7. *A description of action taken following examination of mobile phones and other electronic devices including:*

a. *The number of visa cancellations following examination in the period 1 July 2009-30 June 2019, the legal provision for that cancellation (e.g. s 116 of the Migration Act 1958 (Cth)), and a description of the reason for cancellation, broken down by fiscal year.*

b. *The number of referrals to the police or other law enforcement agency or Department of Public Prosecutions following examination in the period 1 July 2009-30 June 2019 and the reason for that referral, broken down by fiscal year.*

c. The number of prosecutions following examination in the period 1 July 2009-30 June 2019, broken down by the alleged offence prosecuted and fiscal year.

d. The number of travellers taken into immigration detentions under s 189 of the Migration Act 1958 (Cth) following examination in the period 1 July 2009-30 June 2019 broken down by fiscal year.

e. The number of travellers taken into questioning detention under s 192 of the Migration Act 1958 (Cth) during or following examination in the period 1 July 2009-30 June 2019 broken down by fiscal year.

8. The total number of complaints made to the Department by travellers in relation to the examination of mobile phones and a description in relation to the examination of mobile phones or other electronic devices, the copying of data or retention of electronic devices; broken down by the country of nationality or citizenship of the complainant and fiscal year.'

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 dated 31 January 2020
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

4 Documents in scope of request

The Department has identified five documents as falling within the scope of your request. Four documents were in the possession of the Department when your request was received on 31 January 2020. One document was created by the Department in order to respond to your request under Section 17 of the FOI Act.

Regarding points numbered 5 to 8 outlined in your FOI request, a specific count of, or type of individual devices is not available. As such, the document created by the Department in order to respond to your request under section 17 of the FOI ACT, provides a count of examination records where an electronic device, regardless of type, was intercepted.

5 Decision on access

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

- Release two documents in full.
- Release three documents in part with exemptions.

6 Reasons for decision

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.

Attachment A is a schedule which describes the relevant document and sets out my decision.

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.

It is the Department's policy to exclude the personal details of officers, 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 document has been considered for release to you as they it is relevant to your request.

6.2 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 used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Disclosure of some of the information marked 's47E(d)' in documents 2 to 4 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Department's border operational methods and procedures.

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.

Some information marked 's47E(d)' in documents 2 to 4 consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business

areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department and its partner agencies.

Accordingly, I have decided that parts of 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 considered whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

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

As I have decided that parts of the document 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 document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the document.
- 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 factors that weigh against the release of the conditionally exempt information in the document:

- Disclosure of the operational email addresses which are conditionally exempt under section 47E(d) of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. The Department has established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong

public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure of the exempt information.

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 is not in the public interest and 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/C2020C00110>. 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:

OR
By email to: foi.reviews@homeaffairs.gov.au

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.

(signed electronically)

Position Number 60094112
Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982*****FOI request:** FA 20/01/01226**File Number:** OBJ2020/03207

No.	No. of pages	Description	Decision on release	
1.	2	Document created pursuant to section 17	Release in full	
2.	24	Instruction and Guideline – Electronic Examination in the Airport Environment - June 2011	Release in part	s22(1)(a)(ii) s 47E(d)
3.	27	Procedural Instruction – Baggage Examination at the border (s186 Customs Act) – May 2018	Release in part	s22(1)(a)(ii)s s 47E(d)
4.	21	Procedural Instruction – Detention and Search (s252 of the migration act) – December 2018	Release in part	s22(1)(a)(ii)s s 47E(d)
5.	58	Form – Register of Electronic Records – July 2015	Release in full	