



9 November 2020

Ms K Coddington

BY EMAIL: foi+request-6488-fc1d3bb7@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/07/00772

File Number: OBJ2020/23768

Dear Ms Coddington

Freedom of Information (FOI) request - Access Decision

On 17 July 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:

the statement of requirement, and any preliminary or interim evaluation reports, and final evaluation report generated from the "You won't be settled in Australia" public information campaign regarding asylum seekers arriving by boat ca. 2012-2014.

the statement of requirement, and any preliminary or interim evaluation reports, and final evaluation report generated from the "No Advantage" public information campaign regarding asylum seekers arriving by boat ca. 2012-2013.

the statement of requirement, and any preliminary or interim evaluation reports, and final evaluation report generated from the "No Way" public information campaign regarding asylum seekers arriving by boat ca. 2014-2016.

the statement of requirement, and any preliminary or interim evaluation reports, and final evaluation report generated from the "Don't throw your money in the water" public information campaign regarding asylum seekers arriving by boat ca. 2014-2015.

the statement of requirement, and any preliminary or interim evaluation reports, and final evaluation report generated from the "Don't be sorry" public information campaign regarding asylum seekers arriving by boat ca. 2012-2013.

the statement of requirement, sample campaign materials, and any preliminary or interim evaluation reports, and final evaluation report generated from the offshore anti-people smuggling public information campaigns regarding asylum seekers arriving by boat ca. 2016-2018.

On 12 August 2020 the Department issued you a notice under section 24AB of the FOI Act advising you that the work involved in processing your request would 'substantially and unreasonably divert the resources' of the Department from its other operations.

On 14 August 2020 you agreed to revise the scope of your request to:

the final evaluation report generated from the following public information campaigns regarding asylum seeker arriving by boat:

"You won't be settled in Australia" (2012-2014)

"No Advantage" (2012-2013)

"Targeting Diaspora Communities" (2012-2014)

"No Way" (2014-2016)

"Don't throw your money in the water" (2014-2015)

"Don't be sorry" (2012-2013)

"You will be turned back" and "Zero chance" (2016-2019)

Similar to the McNair Ingenuity Report titled Campaign Evaluation "By Boat, No Visa" written in 2013 and released under Freedom of Information requests, available at the following link:

<https://www.homeaffairs.gov.au/foi/files/2011-2014/FA140100210.pdf>.

This request includes no emails.

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)

4 Documents in scope of request

The Department has identified two documents as falling within the scope of your request relating to the "No way" and "Don't be sorry" campaigns. These documents were in the possession of the Department on 17 July 2020 when your request was received.

No documents have been identified as being in scope for the remainder of your request for the final evaluation reports for the following campaigns regarding asylum seeker arriving by boat:

"You won't be settled in Australia" (2012-2014)

"No Advantage" (2012-2013)

"Targeting Diaspora Communities" (2012-2014)

"Don't throw your money in the water" (2014-2015)

"You will be turned back" and "Zero chance" (2016-2019).

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

The Department has undertaken reasonable searches in relation to the documents you have requested access to.

Having regard to your request and the types of documents that may fall within the scope of your request I am satisfied that the searches conducted were extremely thorough and all reasonable steps have been taken to locate any document relevant to your request.

5 Decision

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has undertaken reasonable searches in relation to part of your request and that no documents were in the possession of the Department on 17 July 2020 when your FOI request was received. As such, I am refusing part of your request based on the application of section 24A of the FOI Act.

The decision in relation to the "No way" and "Don't be sorry" campaign evaluation reports in the possession of the Department which fall within the scope of your request is as follows:

- Release two 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.

It is the Department's policy 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 decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have 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.

I consider that the release of the information marked 's33(a)(iii)' in the documents would, or could reasonably be expected to cause damage to the Australian Government's international relations.

I am of the view that the disclosure of parts of document 1 and 2 would adversely impact on the ability of the Department to maintain good working relations with a foreign government and reasonably be expected to inhibit future negotiations between the Australian Government and a foreign government.

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 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.

I consider that the documents provides insight into the Department's offshore communication activities relating to illegal boat arrivals. I am satisfied that the disclosure of the document could undermine the effectiveness of offshore communication activities undertaken by the Department in the future.

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 activities and procedures 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 activities and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those activities and/or procedures to avoid jeopardising their future effectiveness.

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 turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.5 below.

6.4 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents contains the name of a third party individual.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individual concerned is not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to final evaluations reports on campaigns relating to the arrival of asylum seekers by boat rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F 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 at paragraph 6.5 below.

6.5 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.
- the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents..
- no insights into public expenditure will be provided through examination of the documents.
- 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 could reasonably be expected to prejudice the effectiveness of the Department's communication campaigns. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its communication campaigns relating to illegal boat arrivals is not

- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information 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

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.

Samantha Taylor
Authorised Decision Maker
Department of Home Affairs



9.11.2020

ATTACHMENT A

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

FOI request: FA 20/07/00772

File Number: OBJ2020/23768

No	Date of document	No. of pages	Description	Decision on release	
1.	26.06.2013	78	Campaign Evaluation – Don't be sorry	Exempt in part	22(1)(a)(ii) 33(a)(iii) 47E(d) 47F
2.	17.12.2014	108	Campaign Evaluation – No way	Exempt in part	22(1)(a)(ii) 33(a)(iii) 47E(d) 47F