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Department of Immigration and Border Protection

4 August 2014

**In reply please quote:**

FOI Request FA 14/07/00236

File Number ADF2014/23809

To Peter Marquis-Kyle

Email: [foi+request-669-018f0f07@righttoknow.org.au](mailto:foi+request-669-018f0f07@righttoknow.org.au)

Dear Mr Marquis-Kyle

**Freedom of Information request – decision on request**

This letter refers to your request received on 4 July 2014 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

*Incident Detail Report 1-71DPF7 from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.*

**Decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents.

My decision is to release, in part, the documents within the scope of your request.

Please see the attached Decision Record and Schedule of Documents which outline the reasons for my decision and identifies the exempt material.

**Review rights**

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the department my 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 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.

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Applications for review should be sent to:

Freedom of Information  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

Or by email to: [foi@immi.gov.au](mailto:foi@immi.gov.au)

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at [www.oaic.gov.au](http://www.oaic.gov.au).

**How to make a complaint about the handling of this FOI request**

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act. Information about how to submit a complaint is also available at [www.oaic.gov.au](http://www.oaic.gov.au).

**Contacting the FOI Section**

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Janelle Raineri  
Authorised decision maker  
FOI and Privacy Policy Section  
Parliamentary and Executive Coordination Branch  
Department of Immigration and Border Protection

Email [foi@immi.gov.au](mailto:foi@immi.gov.au)

**Attachments**

- ✓ Attachment A - Decision Record
- ✓ Attachment B - Schedule of Documents
- ✓ Attachment C – Extract of relevant legislation
- ✓ Attachment D - Documents released



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Department of Immigration and Border Protection

## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 14/07/00236

File Number ADF2014/23809

#### Scope of request

*Incident Detail Report 1-71DPF7 from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.*

#### Documents in scope

1. Electronic record – Incident Detail Report – Incident Number 1-71DPF7 – containing 2 folios
2. Electronic record – Attachment – Post Incident Review - Incident Number 1-71DPF7 – containing 1 folios

#### 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.

#### Information considered

In reaching my decision, I have considered the following:

- the *Freedom of Information Act 1982*;
- departmental documents (identified above);
- consultation with relevant business areas; and
- the Australian Information Commissioner's guidelines relating to access to documents held by government.

#### Reasons for decision

I have considered the documents within the scope of your request and applied exemptions in part as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

#### *Conditional exemption – personal information - s.47F(1)*

A document is *conditionally exempt* under s.47F(1) of the FOI Act if its release would *involve the unreasonable disclosure of personal information about any person (including a deceased person)*. I am satisfied the documents falling within the scope of your request contain the personal information of third parties.

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The exemption in s.47F(1) of the FOI Act applies if I am satisfied that the release of information would involve the *unreasonable* disclosure of third parties personal information. The FOI Act states that when deciding whether the disclosure of personal information would be *unreasonable* I *must* have regard to the factors set out in s.47F(2), being:

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

I have considered each of these elements separately below.

*(a) Extent to which the information is known*

While I note that a summary of the incident is in the public domain the specific details of the individual's concerned have not previously been released. The identity of the individuals is not widely known.

*(b) Whether the person to whom the information relates is known to be associated with the matters in the document*

As discussed above the identity of the individuals involved in the incident is not widely known. Their personal details in connection to the incident have not been previously released.

*(c) The availability of the information from publicly available sources*

As discussed above there is a summary of the incident in the public domain. However, the personal information identified as exempt is not available through any public sources.

*(d) Any other matters that the agency considers relevant*

- The information is not your personal information.
- Every person has the right to expect that their personal information will be securely maintained by the department.
- Whether the personal information; on its own; or in connection with other information already known to other persons, amounts to the individual being identified.

After considering each element in s.47F(2) I am satisfied that disclosure of personal information would be *unreasonable*.

Therefore, I am satisfied that the personal information I have identified in the relevant documents is *conditionally exempt* under s.47F(1) of the FOI Act. A *conditionally exempt* document **must** be released under the FOI Act unless the release would be *contrary to the public interest*. As a result, I must now consider the factors set out in the public interest test in s.11B(3) of the FOI Act.

*Factors favouring disclosure*

While release would promote the objects of the FOI Act, I do not consider that it would add or inform debate on a matter of public importance. This is because the department has previously released a summary of this incident.

The department does release information about immigration detention through reviews and reports on its website. Information is also routinely provided in Senate Estimates in relation to immigration detention.

In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

*Factors weighing against disclosure*

The OAIC has issued guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act. However, I note that this list is not exhaustive and I may consider any other relevant factors.

I consider that these factors are relevant to the documents in question:

- prejudice the protection of an individual's right to privacy
- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy
- prejudice the fair treatment of individuals

The information contained within the documents wholly relates to a person other than you. The department is obliged to take action to prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight.

On balance, I am satisfied that the disclosure of the information I have identified as personal information would amount to an unreasonable disclosure of personal information. Further, I am satisfied that the release of the personal information in the documents would be contrary to the public interest. Therefore, I am satisfied that the personal information in the documents is exempt from release under section 47F(1) of the FOI Act.

Having reached that view, s.22(2) of the FOI Act requires me to provide you with an edited copy of the documents, with the exempt information deleted under s.22(1)(b).



Janelle Raineri  
Authorised decision maker  
FOI and Privacy Policy Section  
Parliamentary and Executive Coordination Branch  
Department of Immigration and Border Protection

Email           foi@immi.gov.au

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Attachment B

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 14/07/00236

File Number ADF2014/23809

**1. Incident Detail Report – Incident Number 1-71DPF7 – containing 2 folios**

<b>Folio</b>	<b>Description</b>	<b>Decision</b>	<b>Legislation</b>
1-2	<b>Incident Detail Report</b> Third party personal information identified.  Irrelevant material identified and deleted – Metadata is attached to the report at the time it is extracted from the system this data is not contained within the electronic record.	<b>Exempt in part</b>  <b>Irrelevant material</b>	<b>s.47F(1)</b>  <b>s.22(1)</b>

**2. Attachment to Incident report - Incident Number 1-71DPF7 – containing 1 folio**

<b>Folio</b>	<b>Description</b>	<b>Decision</b>	<b>Legislation</b>
3	<b>Post Incident Review</b> Third party personal information	<b>Exempt in part</b>	<b>s.47F(1)</b>

## Attachment C

### Extract of relevant legislation

#### 23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

#### 22 Access to edited copies with exempt or irrelevant matter deleted

##### *Scope*

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

##### *Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

##### *Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and

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- (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

#### **47F Public interest conditional exemptions—personal privacy**

##### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (a) the extent to which the information is well known;
  - (b) 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;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

##### *Access given to qualified person instead*

- (4) Subsection (5) applies if:
  - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
  - (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

**qualified person** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their



well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

## **11B Public interest exemptions—factors**

### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include 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.

### *Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (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.

### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.