



4 May 2021

Mr E Ross

BY EMAIL: foi+request-6881-f7e5d562@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/11/00503

File Number: OBJ2020/35640

Dear Mr Ross

Freedom of Information (FOI) request - Access Decision

On 10 November 2020, the Department of Home Affairs (the Department) received a request for access to 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:

- 1) *Enhanced Screening Operational Guidelines*
- 2) *Enhanced Screening Quality Assurance Plan*.

On 16 November 2020 you revised the scope of your request to the following documents:

A previous FOI released with the file number ADF2013/18867 (Enhanced Screening Policy Guidelines) makes reference to two documents titled 'Enhanced Screening Operational Guidelines' and 'Enhanced Screening Quality Assurance Plan'. These are documents that are connected to the enhanced screening process that was introduced in 2012 for assessment of Australia's non-refoulement obligations. As suggested by the titles, the former concerns the operational guidelines for this policy, the later is the policy guidelines for quality assessment.

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 document 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)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

4 Document in scope of request

In relation to Part 1 of your request, a document titled '2013 Enhanced Screening Operational Guidelines' was administratively released to you on 25 March 2021.

In relation to Part 2 of your request, you have requested access to the '*Enhanced Screening Quality Assurance Plan*'. The Department has identified one document titled '*Non-Refoulement Screening Quality Control and Assurance Framework*' as falling within the scope of your request despite its title differing from that which you originally specified. It is noted that this draft document was not finalised and was not put into operation. This document was in the possession of the Department on 10 November 2020 when your request was received.

5 Decision

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

- Release one document in part with deletions

Reasons for Decision

Detailed reasons for my decision that the exemption provision applies to that information are set out below.

5.1 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33(a)(i) 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 security of the Commonwealth.

For the reasons set out below, I consider that there are real and substantial grounds for expecting that the disclosure of the documents exempted under section 33(a)(i) would cause damage to the security of the Commonwealth.

Security

'Security' is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time.¹ 'Security of the Commonwealth' is defined in section 4(5) of the FOI Act as follows

- (5) *Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:*
 - (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and ...*

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant.² That Act defines 'security' as:

- (a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*
 - (i) *Espionage*
 - (ii) *Sabotage*
 - (iii) *Politically motivated violence*
 - (iv) *Promotion of communal violence*
 - (v) *Attacks on Australia's defence system; or*
 - (vi) *Acts of foreign interference;**Whether directed from, or committed within, Australia or not; and*
 - (aa) *the protection of Australia's territorial and border integrity from serious threats; and*
 - (b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

Paragraph (aa) is particularly on point. It was inserted by the *Anti-People Smuggling and Other Measures Act 2010* (Cth) (Schedule 2). The Explanatory Memorandum for the *Anti-People Smuggling and Other Measures Bill 2010* (Cth), states that 'serious threats to Australia's territorial and border integrity' include 'those posed by people smuggling activities' (at 2-3).

Operation Sovereign Borders

The Department is part of a whole-of-government response to border protection issues that has been established through Operation Sovereign Borders (OSB). OSB is a military-led, border security initiative supported and assisted by a wide range of federal government agencies. The OSB Joint Agency Task Force (JATF) has been established to ensure a whole-of-government effort aimed at combating maritime people smuggling and protecting Australia's borders.

¹ *Church of Scientology v Woodward* (1982) 154 CLR 25 at [19].

² See *Staats and National Archives of Australia* [2010] AATA 531 at [99].

OSB was established on 18 September 2013 and has successfully reduced the number of illegal maritime ventures to Australia and prevented loss of life at sea. Australia remains committed to ending the criminal activity of people smuggling. It aims to ensure that Australia has effective control of the circumstances in which people enter Australia.

The JATF is supported by three main lines of effort:

- Disruption and Deterrence—led by the Australian Federal Police and
- Response and Returns—led by this Department, which includes the Australian Border Force (ABF) and MBC
- Regional Processing and Resettlement- led by this Department.

For a document (or part of a document) to be exempt under s 33(a)(i), I must be satisfied that, on the balance of probabilities, disclosure would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

I consider that the disclosure of the information contained within the document that I regard as exempt under s 33(a)(i) could cause damage to the security of the Commonwealth by compromising operational functions, increasing the risk to Australian vessels and personnel and encouraging illegal activity. I consider the particular damage to the security of the Commonwealth to be as follows:

- (a) If the exempt information contained within this Joint Review Report were released, border protection authorities would be forced to revise current operational methodology to minimise the harm caused by those disclosures. This is, by definition, damage to security operations. Current procedures and activities are set with a view to achieving maximum security outcomes with the available resources. Any changes required by a need to counter the advantage afforded to vessels or persons engaging in illegal maritime activities necessarily represents a compromise to operational effectiveness.
- (b) The disclosure of the exempt information would likely provide people smuggling operators with official government information which they could use to manipulate and convince any potential illegal immigrants to embark on voyages to Australia. This would be an improper use of the information which may also cause a risk to human life. To disclose information that indicates the success or otherwise of ventures may also encourage others to engage in people smuggling activities. I consider that there is a strong public interest in preventing the potential risk to human life associated with people smuggling.

As such I have decided that the information marked 's33(a)(i)' in the document(s) is exempt from disclosure under section 33(a)(i) of the FOI Act.

5.2 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.

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.

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 5.3 below.

5.3 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.
- The subject matter of the document does not seem to have a general characteristic of public importance. The matter has a limited scope and, in my view, would be of interest to a very narrow section of the public.
- No insights into public expenditure will be provided through examination of the document.
- 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:

- 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 law enforcement functions and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its law enforcement functions is not compromised or prejudiced in any way. I consider that this 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.

6 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.

7 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>.

8 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.

9 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]

Franca

Position number: 7402

Authorised Decision Maker

Department of Home Affairs