



14 May 2021

Mr Elias Ross

BY EMAIL: foi+request-6970-7cc50ff0@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/12/00395

File Number: OBJ2020/38853

Dear Mr Elias Ross

Freedom of Information (FOI) request - Access Decision

On 10 December 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:

All email correspondences and other documentation that were generated by the Department in the processing and refusal of my previous request for the document 'Response to a Suspected Illegal Entry Vessel and Unauthorised Maritime Arrivals in Australia's Migration Zone (BE-6309)'. A full record of this request can be found here: https://www.righttoknow.org.au/request/procedural_instructions_maritime#incoming-19124.

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

The Department has identified 24 documents as falling within the scope of your request. The documents were in the possession of the Department on 10 December 2020 when your request was received.

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

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 23 documents in part with deletions
- Exempt one document in full from disclosure

6 Reasons for Decision

Detailed reasons for my decision are set out below.

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.

On 15 December 2020, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES). This also includes 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. 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 the Schedule of Documents.

6.2 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 notable, this was introduced 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).

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].

Operation Sovereign Borders

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

Since its establishment on 18 September 2013, OSB has successfully reduced the number of illegal maritime ventures to Australia and prevented loss of life at sea. The Australian Government 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 two operational task groups:

- Disruption and Deterrence Task Group—led by the Australian Federal Police and
- Detection, Interception and Transfer Task Group—led by this Department, which includes the Australian Border Force (ABF) and MBC.

Vessel tasks

The vessels referred to in the documents are engaged in a range of operations on behalf of the Australian Government, patrolling waters off the Australian coast. In undertaking this work, the vessels are under the direction of Maritime Border Command (MBC), Australia's lead maritime law enforcement agency. It brings together officers from the Department and the Department of Defence (Defence) as a joint multi-agency taskforce to identify and respond to illegal activity in Australia's Maritime Jurisdiction (the AMJ). The vessels include Australian Navy vessels, MBC vessels and civilian vessels contracted to the Department.

The vessels are responsible for a number of functions, including:

- illegal exploitation of natural resources
- illegal activity in protected areas
- illegal maritime arrivals
- prohibited imports and exports
- maritime terrorism
- piracy, robbery or violence at sea
- compromise to biosecurity
- marine pollution

In respect of these areas of responsibility, the vessels and their crew have a range of functions and powers including:

- Patrolling Australia's Maritime Jurisdiction (AMJ).
- Surveillance and intelligence gathering.

- Detaining and inspecting vessels suspected of illegal activity within the AMJ.
- Taking control of vessels or directing them to take particular action, including leaving the AMJ or sailing under the Australian vessel's watch to a designated destination.
- Where necessary, destroying craft which pose a risk to Australia (such as craft which are infected with biohazardous organisms, or craft engaged in maritime terrorism).

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) Information within the documents would provide insight into the manner in which vessels involved in national security operations undertake those functions, including tactics, training and procedures.
- (b) Australia's maritime borders are vast. Australia's maritime domain comprises some 12 million square nautical miles – about 11.5 per cent of the world's oceans. Australia has insufficient resources to continuously patrol every possible point of maritime entry into Australia. Even if the insight afforded is considered to be slight, any reduction in the efficiency or effectiveness of current operational methods is likely to have significant consequences. Particularly given the ever-present challenge of managing such an enormous jurisdiction with finite resources.
- (c) 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.
- (d) Increasing the risk to Australian vessels and personnel undertaking border protection work. Patrolling and protecting Australia's AMJ is an inherently dangerous task. By releasing information that would make the activities of Australian vessels more predictable, and would increase the risk of a willing person or persons to cause harm to, or damage, Australian vessels or people.

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.

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.

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.

Some information marked 's47E(d)' consists of internal operational email addresses used by the Department, and are not otherwise publicly available. It is reasonable to find disclosure of this information could result in potential vexatious communication and public inquiries to business areas not resourced to manage communication from members of the public. The Department has established channels of communication for members of the public, and I consider there is no public interest in disclosing internal operational contact details for business areas within the Department. Taking into consideration the operational focus of those business areas, it's reasonable to expect such a diversion of resources could have a substantial adverse effect on the proper and efficient conduct of their operations. Resulting in a substantial adverse effect to the operation of the Department, and its partner agencies.

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 The p 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 would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

When deciding whether the disclosure of the personal information would be 'unreasonable', I have had regard to the four factors set out in s.47F(2) of the FOI Act:

- 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.

I find the information has been limited to a group of people with a business need to know. The individual concerned is not generally known to be associated with the matters discussed in the document, and the information is not available from publicly accessible sources.

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

I therefore decide the information referred to above is conditionally exempt under section 47F of the FOI Act

6.5 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.

- 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.

In deciding whether access to the documents would, on balance, be contrary to public interest I have had regard to section 11B(4) of the Act and have not taken into account the following irrelevant factors:

- 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.*

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:

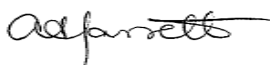
Phone 1300 363 992 (local call charge)

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.



Adelle
Position number: 60086901
Authorised Decision Maker
Department of Home Affairs

SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 20/12/00395

File Number: OBJ2020/38853

No.	Date of document	Description	Decision on release	
1.	24.09.2020	FOI Request	Exempt in part	22(1)(a)(ii) 47F
2.	25.09.2020	Acknowledgement email	Exempt in part	22(1)(a)(ii) 47F
3.	25.09.2020	New FOI Request Notification email	Exempt in part	22(1)(a)(ii) 47E(d) 47F
4.	19.10.2020	Request for extension of time	Exempt in part	22(1)(a)(ii) 47F
5.	19.10.2020	OAIC Extension of time form	Exempt in part	22(1)(a)(ii) 47F
6.	25.09.2020	FOI email requesting documents sent to JATF OSB	Exempt in part	22(1)(a)(ii) 47E(d) 47F
7.	29.09.2020	Email correspondence between FOI Section and Humanitarian Program Capability Branch	Exempt in part	22(1)(a)(ii) 47E(d) 47F
8.	29.09.2020	Email correspondence between FOI Section, JATF OSB and Humanitarian Program Capability Branch	Exempt in part	22(1)(a)(ii) 47E(d) 47F
9.	29.09.2020	Email correspondence between FOI Section, JATF OSB and Humanitarian Program Capability Branch	Exempt in part	22(1)(a)(ii) 47E(d) 47F
10.	11.10.2019	Procedural Instruction – Response to a Suspected Illegal Entry Vessel and Unauthorised Maritime Arrivals in Australia’s Migration Zone	Exempt in full	33(a)(i) 47E(d)
11.	9.10.2020	FOI Section internal email correspondence	Exempt in part	22(1)(a)(ii) 47F
12.	13.10.2020	FOI email correspondence with ABF seeking decision maker	Exempt in part	22(1)(a)(ii) 47E(d) 47F

No.	Date of document	Description	Decision on release	
13.	25.09.2020	FOI email correspondence with JATF OSB regarding document	Exempt in part	22(1)(a)(ii) 47E(d) 47F
14.	14.10.2020	FOI internal email correspondence	Exempt in part	22(1)(a)(ii) 47F
15.	21.10.2020	FOI email correspondence with JATF OSB	Exempt in part	22(1)(a)(ii) 47E(d) 47F
16.	23.10.2020	FOI email - file note of discussion	Exempt in part	22(1)(a)(ii) 47E(d)
17.	28.10.2020	FOI email correspondence with JATF OSB	Exempt in part	22(1)(a)(ii) 47E(d) 47F
18.	27.10.2020	Email correspondence between JATF OSB and ABF ABOC	Exempt in part	22(1)(a)(ii) 47E(d) 47F
19.	29.10.2020	Draft decision letter	Exempt in part	47F
20.	3.11.2020	FOI email correspondence with ABF ABOC	Exempt in part	22(1)(a)(ii) 47E(d) 47F
21.	3.11.2020	FOI email correspondence with JATF OSB	Exempt in part	22(1)(a)(ii) 47E(d) 47F
22.	9.11.2020	Signed decision record	Exempt in part	47F
23.	9.11.2020	Decision email to applicant Attachment (duplicate – refer to No.22)	Exempt in part	22(1)(a)(ii) 47F
24.	9.11.2020	FOI email to relevant business areas notifying of decision	Exempt in part	22(1)(a)(ii) 47E(d)