



Australian Government

Department of Immigration and Border Protection

29 October 2014

In reply please quote:

FOI Request FA 14/07/01381

File Number ADF2014/27019

Daniel O'Connor

via Right to Know

Copy sent by email to: foi+request-727-6620b945@righttoknow.org.au

Dear Mr O'Connor

Freedom of Information request – decision on request

This letter refers to your request received on 30 July 2014 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

A recent ABC news article (<<http://www.abc.net.au/news/2014-07-30/sarah-hanson-young-denied-access-to-curtin-detention-centre/5635690>>) reports:

"When the minister's office became aware of the request the minister sought advice from the Department, and was advised that access would not be appropriate at this time, based on the interests of the good management and safety of the centre."

I seek access to the advice requested and the response to the minister by the department.

Additionally, I seek access to the document(s) which would have been relied upon to provide an accurate response to the minister; such as a recent operational or management report regarding the Curtin detention centre; or an issue register detailing current management or risk issues & the mitigation plans in place.

Decision

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. Read together these form my reasons for decision as required under s.26 of the FOI Act.

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.

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

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.


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.

Contacting the FOI Section

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

Yours sincerely



Steven HOCKING

Authorised decision maker

FOI and Privacy Policy Section

Parliamentary & Executive Coordination Branch | Immigration and Border

Protection Portfolio

Telephone (02) 6264 1007

Email foi@immi.gov.au

Attachments

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

Attachment A

DECISION RECORD

Request Details

FOI Request FA 14/07/01381

File Number ADF2014/27019

Scope of request

A recent ABC news article (<<http://www.abc.net.au/news/2014-07-30/sarah-hanson-young-denied-access-to-curtin-detention-centre/5635690>>) reports:

"When the minister's office became aware of the request the minister sought advice from the Department, and was advised that access would not be appropriate at this time, based on the interests of the good management and safety of the centre."

I seek access to the advice requested and the response to the minister by the department.

Additionally, I seek access to the document(s) which would have been relied upon to provide an accurate response to the minister; such as a recent operational or management report regarding the Curtin detention centre; or an issue register detailing current management or risk issues & the mitigation plans in place.

Documents in scope

1. Electronic records – email containing 4 pages

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 departmental records.

Information considered

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above); and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

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

Deletion of exempt or irrelevant material under s.22 of the FOI Act

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act. The exempt material does not relate to advice requested and response provided to the Minister or the Minister's Office by the Department.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

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

A document is 'conditionally exempt' under s.47F(1) of the Act if its release would 'involve the unreasonable disclosure of personal information about any person (including a deceased person)'. A conditionally exempt document **must** be released under the FOI Act unless the release would be 'contrary to the public interest'. The Act requires me to undertake a 2 step process in deciding if an exemption applies.

Would the disclosure be an 'unreasonable' disclosure of personal information?

The exemption in s.47F(1) of the Act will only apply if I am satisfied that the disclosure would involve 'unreasonable' disclosure of a third party's personal information. The Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I 'must' have regard to the factors set out in s.47F(2) of the Act:

- (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

The information redacted contains personal information of staff that is not generally known to the public.

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

The person to whom the information relates is not the person to whom the request relates. They are providing the information on behalf of the Secretary. As they are not known to be associated with the matters in the document, then I believe it is an unreasonable disclosure of personal information.

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

The information to which the request relates is not available publicly. I believe that the factor weighs in favour of the disclosure being unreasonable.

(d) Any other matters that the agency considers relevant

The personal information of the individual in the document is not relevant to the request for advice requested and the response provided as per the scope of the request. On balance, I believe that this weighs in favour of the disclosure being 'unreasonable'.

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

Therefore, I am satisfied that the information I have identified in the relevant documents is 'conditionally exempt' under s.47F(1) of the Act.

Is the release 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 Act.

Factors favouring disclosure

I have considered the factors set out in s.11B(3) of the Act. While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure.

Factors weighing against disclosure

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 Act.



Steven HOCKING
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Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/07/01381
File Number ADF2014/27019

1. Departmental File: Email correspondence

Folio	Description	Decision	Legislation
1-2	Email correspondence	Release in part	s.22(1)(a)(ii) s.47F(1)
3-4	Email correspondence	Exempt in full	s.22(1)(a)(ii)

Attachment C – Extract of relevant legislation

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

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.

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
 - (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.

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.

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).