



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA 14/12/01344

File Number ADF2014/46412

Scope of request

Convicted Terrorist Viken Hovsepien was granted Visa to visit Australia in June 2014.

I am requesting all internal communications outlining how the convicted Armenian terrorist "Viken Hovsepien" was granted visa to Australia.

Documents in scope

1. Email dated 4 June 2014 – containing 9 folios
2. Email dated 4 June 2014 – containing 10 folios
3. Email dated 5 June 2014 – containing 3 folios
4. Email dated 5 June 2014 – containing 3 folios
5. Email dated 5 June 2014 – containing 3 folios
6. Email dated 5 June 2014 – containing 4 folios
7. Email dated 5 June 2014 – containing 6 folios
8. Email dated 5 June 2014 – containing 7 folios
9. Email dated 5 June 2014 – containing 10 folios
10. Email dated 6 June 2014 – containing 5 folios
11. Email dated 16 June 2014 – containing 3 folios
12. Email dated 16 June 2014 – containing 12 folios
13. Email dated 20 June 2014 – containing 3 folios
14. Email dated 18 July 2014 – containing 4 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 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.

people our business

6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone: 02 6264 1111 • Fax: 02 6225 6970 • www.immi.gov.au

Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part or in full to documents 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 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.

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 some information regarding Mr Viken (Alex) Hovsepian is in the public domain, the specific details of Mr Hovsepian's case have not previously been released. The specific details of Mr Hovsepian's case are 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 specific details regarding Mr Hovsepian's case are not widely known. Although some of Mr Hovsepian's personal details in connection to the situation have been previously released, the specific details have not.

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

As discussed above, some information regarding Mr Hovsepian is 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 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 there is already information regarding Mr Hovsepian's case in the public domain.

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 s.47F(1) of the FOI Act.



Shannon Bevan
Authorised decision maker
Freedom of Information Section
Department of Immigration and Border Protection
Telephone 02 6264 4667
Email foi@immi.gov.au

25 February 2015



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/12/01344

File Number ADF2014/46412

Department electronic records

Document	Folio	Description	Decision	Legislation
1	1-9	Email dated 4 June 2014	Exempt in Full	s.47F(1)
2	1-10	Email dated 4 June 2014	Exempt in Full	s.47F(1)
3	1-3	Email dated 5 June 2014	Exempt in Full	s.47F(1)
4	1-3	Email dated 5 June 2014	Exempt in Full	s.47F(1)
5	1-3	Email dated 5 June 2014	Exempt in Full	s.47F(1)
6	1-4	Email dated 5 June 2014	Exempt in Full	s.47F(1)
7	1-6	Email dated 5 June 2014	Exempt in Full	s.47F(1)
8	1-7	Email dated 5 June 2014	Exempt in Full	s.47F(1)
9	1-10	Email dated 5 June 2014	Exempt in Full	s.47F(1)
10	1-5	Email dated 6 June 2014	Exempt in Full	s.47F(1)
11	1-3	Email dated 16 June 2014	Exempt in Full	s.47F(1)
12	1-12	Email dated 16 June 2014	Exempt in Full	s.47F(1)
13	1-3	Email dated 20 June 2014	Exempt in Full	s.47F(1)
14	1-4	Email dated 18 July 2014	Exempt in Full	s.47F(1)

Attachment C – Extract of relevant legislation

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).