



20 September 2022

s 22

Victoria Legal Aid  
DX 210646  
MELBOURNE VIC 3000  
AUSTRALIA

Email: migration@vla.vic.gov.au

In reply please quote:

**S 22**

Dear s22

### Freedom of Information request – Revised decision

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 24 May 2022, seeking access to:

**S 22**

### Deemed refused decision

A 'deemed refusal' has occurred as the time for making a decision has expired on 23 June 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

### **Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

#### *55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### **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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below)

### **Revised Decision**

The Department has identified one (1) paper file, one (1) electronic file, two (2) electronic documents and two (2) audio recordings that falls within the scope of your request. These documents were in the possession of the Department on 24 May, 2022 when your request was received.

My decision is to exempt in part the documents in the possession of the Department which falls within the scope of your request. The reasons for my decision are set out in

**Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act.

## Review rights

### 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 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.

### Contacting the Department

You can contact us with an enquiry in a number of ways including by email, through our website; by telephone, through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8:30 am and 4:30 pm Monday to Friday. Details on submitting a webform, or contacting our offices outside Australia are available on our website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).

Yours sincerely

Michelle  
Position Number: 60019770  
Freedom of Information  
Department of Home Affairs  
E: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

### Attachments

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



## Attachment A – Decision Record

### Client Details

s 22

### Scope of Request

s 22

### Departmental records within scope

No.	Description	Reference (if applicable)	No. of folios
1.	Departmental Paper File	s22	318
2.	Electronic Departmental File	s22	52
3.	s 22		01
4.	s 22		01
5.	s 22		N/A
6.	s 22		N/A

### 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*;
- the Australian Information Commissioner’s FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above)

**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 reasons for exemption below.

**22 Access to edited copies with exempt or irrelevant matter deleted (extract)****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.*

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s.22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

You will see these exemptions in the documents released to you as they will be clearly identified with 's.22(1)(a)(ii)' however they will not be individually noted in the Schedule of Documents.

**37 Documents affecting enforcement of law and protection of public safety**

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
  - (b) *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
  - (c) *endanger the life or physical safety of any person.*
- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the fair trial of a person or the impartial adjudication of a particular case;*
  - (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
  - (c) *prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*

The information which I have exempted under section 37(2)(b) is information which, if disclosed, would reveal lawful methods or procedures used by the Department to investigate

complaints and would be reasonably likely to prejudice the effectiveness of those methods or procedures.

I believe disclosure of this information would reasonably compromise the Department's investigation strategy by revealing the Department's methods of investigating issues and in so doing would compromise the Department's ability to successfully utilise such methods or procedures in the future.

It is important that these processes are kept confidential to prevent persons from circumventing these procedures, or from providing false information during these investigations. Release of this information would prejudice the effectiveness of the referral process, and the attainment of true and correct information.

#### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Staff in this Department are in a privileged position, both at the border and within the general community, to make decisions that affect an individual's safety, rights and freedoms. They are also responsible for ensuring the integrity of Australia's border to protect the community from organised crime and other illegal activities.

These roles expose both the Department and its staff to a broad range of risks. Departmental staff may be adversely affected, both in their personal lives and in their ability to perform their role, if information about who they are and the role that they perform within the Department is released publicly.

The Department is aware of, and concerned, that information held by the Department and information contained in decisions made by staff (and indeed the decision-making process itself) creates vulnerability which individuals in the community may seek to exploit. The Department actively takes such precautions as it can against such exploitation. Exploitation can include individuals using the identity of departmental staff, gained through the release of documents, to influence the outcome of a decision and/or policy or as an act of retribution, including through intimidation, harassment or threats to their physical safety.

This is not simply supposition, as there have been a number of actual and recent incidents where departmental staff and their families have been harassed and intimidated by members of the public and journalists following the release of their personal details.

In light of the Government's introduction of stronger anti-terrorism measures and the tightening of immigration laws, the Department assesses that the risk of intimidation and

harassment of its staff will increase. As the checking and investigation processes of clients become more intrusive and time consuming, client frustration inevitably will occur. Frustration leads to anger which, in turn, increases the likelihood of attack – including physical harm.

To protect the Department's operations in maintaining current contact details and emails relating to particular staff members (which the Department would be forced to change to its disadvantage), I consider the documents are exempt in part pursuant to Section 47E(d) limited only to identifying details of staff.

Public Interest arguments:

The Department is of the view that it is not in the public interest to release the personal details of staff contained in the documents subject to consultation, for the reasons discussed above. The Department would argue that all the factors favouring access to the documents under s. 11B(3) would be met by the release, under s. 22(1), of an edited copy of the documents with personal details of staff deleted.

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

- (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).*

The documents that are exempt, either in full or in part, under section 47F of the FOI Act contain personal information.

Having formed the view that the documents are of a kind to which section 47F does apply, I am required to consider whether disclosure of the documents would be unreasonable. I took the following information into consideration:

- The information appears on a file that holds your personal information. This weighs in favour of the release being reasonable.
- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.
- The information in question had no effect on the outcome of your s22. This weighs against the release being reasonable.
- No third party consent was provided. This weighs against the release being reasonable.

On balance I believe it would be unreasonable to release these documents in their complete format.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- a person having a general right of access to any material about them held by the government;
- there is a general public interest in making information held by the Government accessible to the public;
- a person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- inform debate on a matter of public importance; and
- the need for openness and accountability of the Department's operations.
- the extent to which the information is known by the public.

Arguments that against disclosure of the documents include:

- 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
- prejudice security, law enforcement, public health or safety

The information contained within the identified 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.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

Yours sincerely

Michelle  
Position Number: 60019770  
Freedom of Information  
Department of Home Affairs  
E: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)



## Attachment B – Schedule of Documents

### Client Details

**s 22**

For the collation of this FOI request only, all files and documents within the scope have been folioed with an underlined number in the top right hand corner of each page.

### Departmental Paper File – **s 22**

Page No.	Description	Decision	Legislation
1	Third party information	Exempt in part	s.47F(1)
2-3		Released in full	
4	Departmental investigative methods	Exempt in part	s.37(2)(b)
5-6	Third party information	Exempt in part	s.47F(1)
5-7	Departmental investigative methods	Exempt in part	s.37(2)(b)
8-10	Third party information	Exempt in full	s.47F(1)
11-20		Released in full	
21-24	Third party medical documents	Exempt in full	s.47F(1)
25-45		Released in full	
46	Departmental investigative methods	Exempt in part	s.37(2)(b)
47	Departmental operational methods	Exempt in part	s.47E(d)
48	Departmental investigative methods	Exempt in part	s.37(2)(b)
49-51	Departmental investigative methods	Exempt in full	s.37(2)(b)
54	Third party document	Exempt in full	s.47F(1)
55-65		Released in full	
66-74	Third party information	Exempt in full	s.47F(1)
75	Departmental investigative methods	Exempt in part	s.37(2)(b)
76	Departmental investigative methods	Exempt in full	s.37(2)(b)
77		Released in full	
78-80	Departmental investigative methods	Exempt in full	s.37(2)(b)
81-84	Departmental operational methods	Exempt in full	s.47E(d)
85	Departmental operational methods	Exempt in part	s.47E(d)
86-87		Released in full	
88	Departmental operational methods	Exempt in full	s.47E(d)
89-148		Released in full	
149-219	Third party documents	Exempt in full	s.47F(1)
220-231		Released in full	
232	Departmental investigative methods	Exempt in part	s.37(2)(b)
233	Departmental investigative methods	Exempt in full	s.37(2)(b)
234-318		Released in full	

## Electronic Departmental File - s 22

Page No.	Description	Decision	Legislation
1-40		Released in full	
41-43	Departmental operational methods	Exempt in full	s.47E(d)
44-52		Released in full	

## Electronic Records

Document No.	No of folios	Description	Decision	Legislation
1.	1	s 22	Released in full	
2.	1		Released in full	
3.	N/A		Released in full	
4.	N/A		Released in full	



6 September 2022

s 22

Sent by email: s22

In reply please quote:

s 22

Dear s22

### Freedom of Information request – Revised decision

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 15 March 2022, seeking access to:

s 22

### Deemed refused decision

A 'deemed refusal' has occurred as the time for making a decision has expired on 14 April 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

### Revocation of deemed refused decision

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note:* When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

#### **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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below).

#### **Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in

#### **Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

Nicole

Position No. 60095088

FOI Officer | Freedom of Information Section

Department of Home Affairs

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

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



## Attachment A – Decision Record

### Client Details

s22

### Scope of Request

s22

### Departmental records within scope

No.	Description	Reference (if applicable)	No. of folios
1.	Copy of electronic files s 22		249
2.	ICSE Notes - s 22		7
3.	s 22		n/a

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above).

### 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 reasons for exemption below.

## **22 Access to edited copies with exempt or irrelevant matter deleted (extract)**

### *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.*

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.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff and contractors engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

You will see these exemptions in the documents released to you as they will be clearly identified with 's 22 (1)(a)(ii)' however they will not be individually noted in the Schedule of Documents.

## **37 Documents affecting enforcement of law and protection of public safety**

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
  - (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*

- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
- (c) endanger the life or physical safety of any person.

- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
  - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
  - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

The information which I have exempted under section 37(2)(b) is information which, if disclosed, would reveal lawful methods or procedures used by the Department to investigate and would be reasonably likely to prejudice the effectiveness of those methods or procedures.

I believe disclosure of this information would reasonably compromise the Department's investigation strategy by revealing the Department's methods of investigating issues and in so doing would compromise the Department's ability to successfully utilise such methods or procedures in the future.

It is important that these processes are kept confidential to prevent persons from circumventing these procedures, or from providing false information during these investigations. Release of this information would prejudice the effectiveness of the referral process, and the attainment of true and correct information.

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

- (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).*

The documents that are exempt, either in full or in part, under section 47F of the FOI Act contain personal information.

Having formed the view that the documents are of a kind to which section 47F does apply, I am required to consider whether disclosure of the documents would be unreasonable. I took the following information into consideration:

- The information appears on a file that holds your personal information. This weighs in favour of the release being reasonable.
- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.
- Evidence that the third party consents to the release of their personal information for the purposes of this FOI request has not been provided in your request.

On balance I believe it would be unreasonable to release these documents in their complete format.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- a person having a general right of access to any material about them held by the government;
- there is a general public interest in making information held by the Government accessible to the public;
- a person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- inform debate on a matter of public importance; and
- the need for openness and accountability of the Department's operations.
- the extent to which the information is known by the public.

Arguments that against disclosure of the documents include:

- 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
- prejudice security, law enforcement, public health or safety

The information contained within the identified 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.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

Yours sincerely

Nicole  
Position No. 60095088  
FOI Officer | Freedom of Information Section  
Department of Home Affairs  
Email: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)



## Attachment B – Schedule of Documents

### Client Details

**s 22**

For the collation of this FOI request only, all files and documents within the scope have been folioed with an underlined number in the top right hand corner of each page.

### Departmental File - Copy of electronic file **s 22**

Page No.	Description	Decision	Legislation
1-22	-	Released in full	-
23	Prejudice to law enforcement methods and procedures	Exempt in full	s 37(2)(b)
24-26	-	Released in full	-
27-28	Personal information relating to a third party	Exempt in part	s 47F(1)
29-53	-	Released in full	-
54	Personal information relating to a third party	Exempt in part	s 47F(1)
55-249	-	Released in full	-

### Electronic Record - ICSE Notes - **s 22**

Page No.	Description	Decision	Legislation
1	-	Released in full	-
2	Prejudice to law enforcement methods and procedures	Exempt in part	s 37(2)(b)
3-7	-	Released in full	-

### Electronic Records

Document No.	No of folios	Description	Decision	Legislation
1.	n/a	<b>s 22</b>	Released in full	-



7 September 2022

s22  
Anti-Slavery Australia  
PO Box 123  
BROADWAY NSW 2007

Email: ASALegal@uts.edu.au

In reply please quote:

s 22

Dear s22

**Freedom of Information request – Revised decision**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 7 July 22, seeking access to:

s 22

### Deemed refused decision

A 'deemed refusal' has occurred as the time for making a decision has expired on 6 August 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

### Revocation of deemed refused decision

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

#### *55G Procedure in IC review—revocation or variation of access refusal decision*

- (1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*
- (a) giving access to a document in accordance with the request; or*
  - (b) relieving the IC review applicant from liability to pay a charge; or*
  - (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

- (2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
  - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

### Revised decision

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in

**Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

Wanda

Position number 60019771

Freedom of Information Section

Department of Home Affairs

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

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



### Attachment A – Decision Record

#### Client Details

s 22

#### Scope of Request

s 22

#### Departmental records within scope

No.	Description	Reference	No. of folios
1.	Departmental file	s 22	45
2.	Departmental file		89
3.	Departmental file		44
4.	Departmental file		208
5.	Departmental file		127
6.	Departmental file		113
7.	Electronic record s 22		3
8.	Electronic record s 22		1
9.	Electronic record s 22		1
10.	Electronic record s 22		1
11.	Electronic record s 22		1

12.	Electronic record ICSE s 22	1
13.		1
14.		1
15.		1
16.		1

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above);

### 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 reasons for exemption below.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

#### **47F Public interest conditional exemptions—personal privacy (extract)**

##### *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.*

The information identified in the attached Schedule of Documents as being exempt from disclosure to you under section 47F(1) of the FOI Act, is personal information belonging to third parties from whom consent has not been obtained.

Information is conditionally exempt under section 47F(1) 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 unless the release would be contrary to the public interest. I am bound by the FOI Act to firstly consider the conditional exemption, then consider the Public Interest Test in section 11B of the Act.

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

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

In considering the extent to which the information identified under section 47F(1) is well known, I have taken into account that evidence that the third parties consent to the release of their personal information for the purposes of this FOI request, has not been provided.

I have also considered that many of the persons to whom the personal information belongs are not known to be associated with the matters dealt with in this FOI request. I am satisfied that that the information has not been made available on another resource in the public domain.

On balance, I believe that my considerations against each of the above factors weigh in favour of the disclosure being unreasonable.

As I am satisfied that disclosure of the information identified in the Schedule would constitute an unreasonable disclosure of personal information, the information is conditionally exempt under section 47F(1) of the FOI Act.

As I have decided that parts of the documents are conditionally exempt, I must now turn my mind to whether release of the conditionally exempt information would, on balance, be contrary to the public interest. The pro-disclosure principle declared in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure.

**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.*

Section 11B of the FOI Act (relating to the Public Interest Test), sets out four factors favouring access which must be considered if relevant. These include whether access to the documents would do any of the following:

- (a) promote the objects of this Act*
- (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*

These four factors are broadly framed but they do not constitute an exhaustive list. Other factors favouring disclosure may also be relevant in particular circumstances. Note the FOI Act does not list any factors weighing against disclosure. These factors, like those favouring disclosure, will depend on the circumstances.

The Office of the Australian Information Commissioner (OAIC) has issued guidelines that contain lists of factors weighing for and against disclosure, which may be considered (these are not exhaustive lists).

Here are the main factors I have considered, based on the guidelines, which weigh against the release of the conditionally exempt information:

- whether the release of the information could reasonably be expected to prejudice the protection of an individual's right to privacy;
- whether the release of the information could reasonably be expected to prejudice security, law enforcement, public health or public safety;
- whether the release of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness;
- whether the release of the information could reasonably be expected to impede the administration of justice for an individual; and
- whether the release of the information could reasonably be expected to harm the interests of an individual or group of individuals.

I am satisfied that providing you with access to the information would promote the objects of the pro-disclosure principle of the FOI Act by providing you with access to departmental records stored on the file relating to third party emails, personal ID documents and statements given to the department in confidence.

However, I do not consider that the release of personal information belonging to the third parties would inform debate on a matter of public importance or provide an oversight of public expenditure. I also consider that release of the information could reasonably be expected to prejudice the protection of the individuals' right to privacy, and could reasonably be expected to harm the interests of the individuals.

On balance, I have given the greatest weight to the right an individual has to maintain their privacy, and that to release this information without the individual's informed and expressed consent may result in a breach of their privacy.

I must also have regard to section 11B(4) of the Act which sets out parameters to ensure that no irrelevant factor will be considered in the decision making process. I have not taken any of the factors listed under section 11B(4) into account in my decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditional exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

**45 Documents containing material obtained in confidence**

- (1) *A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*
- (2) *Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:*
- (a) *a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
  - (b) *an agency, the Commonwealth or Norfolk Island.*

For documents to be exempted either in full or in part (with deletions made under section 22 of the FOI Act) under section 45 I must be satisfied that;

- the information is specific in nature and inherently confidential;
- the information was communicated and received on the basis of a mutual understanding of confidence;
- any disclosure of the information would amount to an unauthorised use of that information; and
- actual or threatened harm would flow from the misuse of the information.

In my opinion the documents in the schedule listed as exempt under this section contain information of a specific nature that is inherently confidential in that it is not widely known and was conveyed to the Department by a third party on a basis of a mutual understanding that the information was confidential and would not be disclosed to any other party.

I therefore consider that disclosure of this information pursuant to your request under the FOI Act would be unauthorised and sufficient for the party who provided the information to found an action against this Department for breach of confidence.

**37 Documents affecting enforcement of law and protection of public safety**

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
  - (b) *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
  - (c) *endanger the life or physical safety of any person.*
- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the fair trial of a person or the impartial adjudication of a particular case;*
  - (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
  - (c) *prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*

Section 37(1)(b) provides that a document will be exempt if its disclosure under the FOI Act would disclose or enable a person to ascertain the existence or identity of a confidential source of information or the non-existence of a confidential source of information in relation to the enforcement or administration of the law.

I believe that the release of these documents may disclose the confidential source of the information and that the identity of the confidential source may be ascertainable from the contents of the documents. The information was supplied to the Department on an expectation that the identity of the confider would remain confidential.

The Department has a policy of not disclosing the identity of persons providing information to the Department in the absence of their consent or unless there are compelling reasons for so doing. The Department relies on persons or organisations to supply information to it so that it can enforce migration law. If the Department were to disclose the identity of such suppliers it may discourage individuals from providing such information to the Department in the future and would be detrimental to the Department in enforcing the law.

On that basis I am refusing you access under section 37(1)(b) to the information in the documents.

The information which I have exempted under section 37(2)(b) is information which, if disclosed, would reveal lawful methods or procedures used by the Department of investigation and would be reasonably likely to prejudice the effectiveness of those methods or procedures.

I believe disclosure of this information would reasonably compromise the Department's investigation strategy by revealing the Department's methods of investigating issues and in so doing would compromise the Department's ability to successfully utilise such methods or procedures in the future.

It is important that these processes are kept confidential to prevent persons from circumventing these procedures, or from providing false information during these investigations. Release of this information would prejudice the effectiveness of the referral process, and the attainment of true and correct information.

#### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- Inform debate on a matter of public importance; and
- The need for openness and accountability of the Department's operations.
- The extent to which the information is known by the public.

On the other hand I considered the following in favour of non-disclosure:

- An unfair advantage could be gained by knowledge of the operations of the Department;
- Reveal covert operating procedures, the release of which would require the Department to change the way it operates.

Releasing information about the way the Department operates may enable applicants to circumvent certain processes in the future. This would result in the Department having to continually change its processes at a cost to the Department. I have given this the most weight. I therefore believe that releasing this information would be contrary to the public interest.

#### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Staff in this Department are in a privileged position, both at the border and within the general community, to make decisions that affect an individual's safety, rights and freedoms. They are also responsible for ensuring the integrity of Australia's border to protect the community from organised crime and other illegal activities.

These roles expose both the Department and its staff to a broad range of risks. Departmental staff may be adversely affected, both in their personal lives and in their ability to perform their role, if information about who they are and the role that they perform within the Department is released publicly.

The Department is aware of, and concerned, that information held by the Department and information contained in decisions made by staff (and indeed the decision-making process itself) creates vulnerability which individuals in the community may seek to exploit. The Department actively takes such precautions as it can against such exploitation. Exploitation can include individuals using the identity of departmental staff, gained through the release of documents, to influence the outcome of a decision and/or policy or as an act of retribution, including through intimidation, harassment or threats to their physical safety.

This is not simply supposition, as there have been a number of actual and recent incidents where departmental staff and their families have been harassed and intimidated by members of the public and journalists following the release of their personal details.

In light of the Government's introduction of stronger anti-terrorism measures and the tightening of immigration laws, the Department assesses that the risk of intimidation and harassment of its staff will increase. As the checking and investigation processes of clients become more intrusive and time consuming, client frustration inevitably will occur. Frustration leads to anger which, in turn, increases the likelihood of attack – including physical harm.

To protect the Department's operations in maintaining current contact details and emails relating to particular staff members (which the Department would be forced to change to its disadvantage), I consider the documents are exempt in part pursuant to Section 47E(d) limited only to identifying details of staff.

Public Interest arguments:

The Department is of the view that it is not in the public interest to release the personal details of staff contained in the documents subject to consultation, for the reasons discussed above. The Department would argue that all the factors favouring access to the documents under s. 11B(3) would be met by the release, under s. 22(1), of an edited copy of the documents with personal details of staff deleted.

Wanda

Position number 60019771

Freedom of Information Section

Department of Home Affairs

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



## Attachment B – Schedule of Documents

### Client Details

s22 [Redacted]

### Departmental File s 22 [Redacted]

Page No.	Description	Decision	Legislation
1,2,3	Third party names and file information, unrelated to the applicant	Exempt in part	s.47F(1)
7	Methods and procedures	Exempt in part	s.37(2)(b)
21-27	Substantial adverse effect on the operations of an agency	Exempt in full	s.47E(d)
28-40,42,43	Documents containing material obtained in confidence	Exempt in full	s.45(1)

### Departmental File s 22 [Redacted]

Page No.	Description	Decision	Legislation
1,2,3,68,	Third party names and file information, unrelated to the applicant	Exempt in part	s.47F(1)
7-10	Documents containing material obtained in confidence	Exempt in Part	s.45(1)
12-24,66, 74-86,88	Documents containing material obtained in confidence	Exempt in full	s.45(1)
25-53,67-73	Substantial adverse effect on the operations of an agency	Exempt in full	s.47E(d)
55	Methods and procedures	Exempt in part	s.37(2)(b)

### Departmental File s 22 [Redacted]

Page No.	Description	Decision	Legislation
8	Methods and procedures	Exempt in part	s.37(2)(b)
22-27	Substantial adverse effect on the operations of an agency	Exempt in full	s.47E(d)
28-40,42-43	Documents containing material obtained in confidence	Exempt in full	s.45(1)

Departmental File **s 22**

Page No.	Description	Decision	Legislation
1,5,6,7,13,38,39,40,69,72,77,84,91,148,150,153,156,179,180,181,184,187,	Third party names and file information, unrelated to the applicant	Exempt in part	s.47F(1)
1,2,6,7,8,11,13,14,15,17,19,20,21,23,24,25,26,44,45,46,47,48,52,53,57,59,60,120,134,136,	Documents containing material obtained in confidence	Exempt in part	s.45(1)
5,50,54,62-67,97-111,116-117,123,133,135,137,151160-172,176,182,191-203,207	Documents containing material obtained in confidence	Exempt in full	s.45(1)
68-96,152-159,183-190	Substantial adverse effect on the operations of an agency	Exempt in full	s.47E(d)
139	Methods and procedures	Exempt in part	s.37(2)(b)
174-175,205-206	Disclosure of a confidential source	Exempt in full	s.37(1)(b)

Departmental File **s 22**

Page No.	Description	Decision	Legislation
22	Methods and procedures	Exempt in full	s.37(2)(b)
23	Methods and procedures	Exempt in part	s.37(2)(b)
23	Disclosure of a confidential source	Exempt in part	s.37(1)(b)
24	Disclosure of a confidential source	Exempt in full	s.37(1)(b)



Australian Government  
Department of Home Affairs

7 September 2022

s22

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MELBOURNE VIC 3000

Email: migration@vla.vic.gov.au

In reply please quote:

S 22

Dear s22

**Access Decision - Freedom of Information (FOI) request – Release of documents**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 27 June 2022, seeking access to:

S 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 27 July 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

(a) *giving access to a document in accordance with the request; or*

(b) *relieving the IC review applicant from liability to pay a charge; or*

(c) *requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

(a) *the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*

(b) *the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below)

**Revised decision**

The Department has identified the documents that fall within the scope of your request.

My decision is to release in full the documents in the possession of the Department, which falls within the scope of your request. A list of the documents is below for your reference.

No.	Description	Reference	No. of folios
1.	Departmental file	s 22	130
2	s 22	s 22	2

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

**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 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

FOI Officer Position no.60046911 (Devinder)  
Freedom of Information Section  
Department of Home Affairs

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

**Attachments**

- Documents released to you under the FOI Act



9 September 2022

s 22  
Visa Assist Australia  
PO Box 133  
ALSTONVILLE NSW 2477

Sent via email: s22

In reply please quote:

s 22

Dear s22

**Access Decision - Freedom of Information (FOI) request – Release of documents**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 11 July 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 10 August 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note:* When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below)

**Revised decision**

The Department has identified the documents that fall within the scope of your request.

My decision is to release in full the documents in the possession of the Department, which falls within the scope of your request. A list of the documents is below for your reference.

No.	Description	Reference (if applicable)	No. of folios
1.	Departmental Electronic File	s 22	71
2.	<b>s 22</b>		1

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

## **22 Access to edited copies with exempt or irrelevant matter deleted (extract)**

### *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.*

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 schedule 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.

**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 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

John

Position number: 6004 6997

FOI Decision Maker

Freedom of Information Victoria

E: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

**Attachments**

- Documents released to you under the FOI Act



5 September 2022

**s 22**

Sent via email: **s22**

In reply please quote:

**s 22**

Dear **s22**

**Access Decision - Freedom of Information (FOI) request – Release of documents**

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 20 April 2022, seeking access to:

**s 22**

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 20 May 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note:* When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

(a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and

(b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below)

**Revised decision**

The Department has identified the document that falls within the scope of your request.

My decision is to release in full the document in the possession of the Department, which falls within the scope of your request. A list of the documents is below for your reference.

No.	Description	Reference	No. of folios
1.	s 22 Screenshots (Client summary/History)	s 22	2

### 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 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

John  
Position number: 6004 6997  
FOI Decision Maker  
Freedom of Information Victoria  
E: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

### Attachments

- Documents released to you under the FOI Act



Australian Government  
Department of Home Affairs

7 September 2022

s22  
Victoria Legal Aid  
DX 210646 MELBOURNE  
MELBOURNE VIC 3000

Email: migration@vla.vic.gov.au

In reply please quote:

s 22

Dear s22

**Revised Decision - Freedom of Information (FOI) request**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 22 June 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 22 July 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

### Revocation of deemed refused decision

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

- *55G Procedure in IC review—revocation or variation of access refusal decision*
- (1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*
  - (a) *giving access to a document in accordance with the request; or*
  - (b) *relieving the IC review applicant from liability to pay a charge; or*
  - (c) *requiring a record of personal information to be amended or annotated in accordance with the application.*
- *Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*
- (2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
  - (a) *the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
  - (b) *the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

### Revised decision

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in

#### **Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

FOI Officer Position no.60046911 (Devinder)  
Freedom of Information Section  
Department of Home Affairs

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

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



## Attachment A – Decision Record

### Client Details

s 22

### Scope of Request

s 22

### Departmental records within scope

No.	Description	Reference (if applicable)	No. of folios
1.	Departmental File	s 22	205
2.	Departmental audio recording	s 22	-
3.	Electronic records from s22	s 22	1

### 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*;
- the Australian Information Commissioner’s FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above)

### Reasons for decision

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

In your acknowledgement letter, you were advised of the Department’s policy to consider irrelevant to the scope of your request the personal details of staff . This includes their

names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request

You will see these exemptions in the documents released to you as they will be clearly identified with s.22 (1)(a)(ii) however they will not be individually noted in the Schedule of Documents.'

## **s22 Access to edited copies with exempt or irrelevant matter deleted (extract)**

### *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.*

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.

I have decided that parts of the documents would disclose information that could reasonably be regarded as irrelevant to your request. This information consists of other unrelated client records.

The schedule 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.

FOI Officer Position no.60046911 (Devinder)  
Freedom of Information Section  
Department of Home Affairs

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



## Attachment B – Schedule of Documents

### Client Details

**s 22**

### Departmental File **s 22**

Page No.	Description	Decision	Legislation
1-136		Released in full	
137-141	Other unrelated client records.	Exempt in part	s.22(1)a(ii)
142-205		Released in full	

### Electronic Records

Document No.	No of folios	Description	Decision	Legislation
<b>s22</b>	10	<b>s22</b>	Released in full	
	-	<b>s 22</b>	Released in full	



Australian Government  
The Treasury

T

4 October 2022

s 22

s 22

Dear s 22

**Revised decision (charges)**

I refer to your request of 24 July 2021 for review by the Australian Information Commissioner of the Treasury's internal charges review decision dated 21 July 2021. The internal review decision affirmed the Treasury's charges estimate of s22 to process your request for access under the *Freedom of Information Act 1982* (FOI Act) to the following:

s 22

I am authorised to make decisions under section 23(1) of the FOI Act.

[treasury.gov.au](https://treasury.gov.au)

@treasury\_AU

@commonwealthtreasury

@australian-treasury

Langton Crescent  
Parkes ACT 2600  
Australia

P: +61 2 6263 2800

I have decided to make a revised decision to waive the charge under section 55G(1)(b) of the FOI Act. Under section 55G(2)(b) of the FOI Act, this decision will automatically become the decision under the Information Commissioner's continuing review. For this reason, no statement setting out your rights of review regarding my decision is attached.

Time to process your request will recommence from the day following this decision. The Treasury will undertake third party consultations, as notified to you in the Treasury's charges estimate of 26 May 2021. In this respect, I confirm the 30-day extension of time to complete your request pursuant to sections 15(6) and 27 of the FOI Act.

If you have any questions, kindly contact the FOI team on [FOI@treasury.gov.au](mailto:FOI@treasury.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Alvey', written in a cursive style.

Lachlan Alvey  
A/g Assistant Secretary  
Market Conduct Division



27 September 2022

s 22

Sent via email: s22

In reply please quote:

s 22

Dear s22

### Freedom of Information request – Release of documents

This letter refers to your request received on 30 June 2022 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

s 22

### 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. In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (Decision Record);
- The Information Commissioner guidelines; and
- The terms of your request

My decision is to release with exemption the documents within the scope of your request. Please see the attached Decision Record and Schedule of Documents for information on those documents which have been exempted or refused as part of this decision.

### Review rights

#### 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 <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

### How to make a complaint about the handling of your 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.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. A complaint form is also available at [www.oaic.gov.au](http://www.oaic.gov.au).

If you are unhappy with the Department's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process which has been outlined in the previous section.

### Contacting the FOI section

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

Yours sincerely

Julie

*Electronically signed*

Position No: 60016893

FOI Officer

Freedom of Information

Department of Home Affairs

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

27 September 2022

### Attachment(s)

#### Decision Record

#### Schedule of Documents

#### Documents released:

1. Departmental file number **s 22** – containing 37 pages – Released in full.
2. Departmental file number **s 22** – containing 43 pages – Released in full.
3. Departmental file number **s 22** – containing 69 pages – Released in full.
4. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes overview – containing 4 pages – Released in full.
5. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes overview – containing 4 pages – Released in full.
6. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes overview – containing 4 pages – Released with exemptions.
7. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, screen print out of **s22** – containing 1 page – Released in full.

## DECISION RECORD

### Client Details



### Documents in scope

1. Departmental file number s 22 – containing 37 pages.
2. Departmental file number s 22 – containing 43 pages.
3. Departmental file number s 22 – containing 69 pages.
4. Departmental electronic record, Integrated Client Services Environment, Client ID: s 22, Request Id s 22, Notes overview – containing 4 pages.
5. Departmental electronic record, Integrated Client Services Environment, Client ID: s 22, Request Id s 22, Notes overview – containing 4 pages.
6. Departmental electronic record, Integrated Client Services Environment, Client ID: s 22, Request Id s 22, Notes overview – containing 4 pages.
7. Departmental electronic record, Integrated Client Services Environment, Client ID: s 22, screen print out of s22 – containing 1 page.

### Information considered

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. In reaching my decision, I have considered the following:

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

### 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.

### **22 Access to edited copies with exempt or irrelevant material deleted**

- (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.*

A number of documents contain information that is exempt under one or more sections of the FOI Act. I am able to provide you with an edited copy of those documents under section 22(1)(b).

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

#### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this

Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department's operations.

On the other hand I considered the following in favour of non-disclosure:

- Could reasonably be expected to impede the administration of migration and citizenship laws, including procedural fairness
- Reveal certain operating procedures, the release of which would require the Department to change the way it operates.

The disclosure of documents exempt under section 47E(d) would reveal various methods used by the Department, giving the applicant prior knowledge of the processes of the Department. This could allow applicants to deliberately circumvent certain departmental processes in the future, thereby prejudicing and compromising the effectiveness of the processes set up for the core operational activity of the Department – processing of visa and citizenship applications. In addition, changing the processes continually would come at a cost to the Department.

On balance, I am satisfied that the release would be contrary to the public interest and the documents are exempt under section 47E(d) of the FOI Act.

Yours sincerely,

Julie

*Electronically signed*

FOI Officer Position no. 60016893

Freedom of Information Section

Department of Home Affairs

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

27 September 2022

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**



1. Departmental file number **s 22** – containing 37 pages – Released in full.
2. Departmental file number **s 22** – containing 43 pages – Released in full.
3. Departmental file number **s 22** – containing 69 pages – Released in full.
4. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22** Notes overview – containing 4 pages – Released in full.
5. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22** Notes overview – containing 4 pages – Released in full.
6. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes overview – containing 4 pages – Released with exemptions:

Page	Description	Decision	Legislation
2	Departmental Internal process	Released with exemptions	47E(d)

7. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22** – containing 1 page – Released in full.



Australian Government  
Department of Home Affairs

27 September 2022

s 22

Refugee & Immigration Legal Service (RAILS)  
PO Box 5143  
WEST END QLD 4010

Sent via email: s22

In reply please quote:

s 22

Dear s22

### Freedom of Information request – Release of documents

s22 has authorised you to receive correspondence about their Freedom of Information request on their behalf. Correspondence will not be sent directly to the applicant. In this letter references to 'you' and 'your' relate to the applicant.

This letter refers to your request received on 05 May 2022 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

s 22

### 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. In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (Decision Record);
- The Information Commissioner guidelines; and
- The terms of your request

My decision is to release with exemption the documents within the scope of your request. Please

see the attached Decision Record and Schedule of Documents for information on those documents which have been exempted or refused as part of this decision.

## Review rights

### 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 <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

### How to make a complaint about the handling of your 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.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. A complaint form is also available at [www.oaic.gov.au](http://www.oaic.gov.au).

If you are unhappy with the Department's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process which has been outlined in the previous section.

### Contacting the FOI section

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

Yours sincerely

Julie

*Electronically signed*

Position No: 60016893

FOI Officer

Freedom of Information

Department of Home Affairs

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

27 September 2022

## Attachment(s)

### Decision Record

### Schedule of Documents

#### Documents released:

1. Departmental file number **s 22** - containing 527 pages – Released with exemptions.
2. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes Overview, relating to **s 22** – containing 35 pages – Released in full.
3. Departmental file number **s 22** – audio recording – Released in full.

## DECISION RECORD

### Client Details

**s 22**

### Documents in scope

1. Departmental file number **s 22** - containing 527 pages.
2. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes Overview, relating to **s 22** - containing 35 pages – containing 35 pages.
3. Departmental file number **s 22** - audio recording.

### Information considered

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. In reaching my decision, I have considered the following:

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

### 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.

### **22 Access to edited copies with exempt or irrelevant material deleted**

- (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.*

A number of documents contain information that is exempt under one or more sections of the FOI Act. I am able to provide you with an edited copy of those documents under section 22(1)(b).

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

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

- (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).*

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

The documents that are exempt, either in full or in part, under section 47F of the FOI Act contain personal information.

I have formed the view that the documents are of a kind to which section 47F does apply. Therefore, I am required to consider whether disclosure of the documents would be unreasonable. I took the following information into consideration:

- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.

On balance I believe it would be unreasonable to release these documents.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered the following factors in favour of the disclosure of the documents:

- there is a general public interest in making information held by the Government accessible to the public;

On the other hand, I have considered the following factor against disclosure of the documents:

- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

The information contained within the identified 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.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

#### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department's operations.

On the other hand I considered the following in favour of non-disclosure:

- Could reasonably be expected to impede the administration of migration and citizenship laws, including procedural fairness
- Reveal certain operating procedures, the release of which would require the Department to change the way it operates.

The disclosure of documents exempt under section 47E(d) would reveal various methods used by the Department, giving the applicant prior knowledge of the processes of the Department.

This could allow applicants to deliberately circumvent certain departmental processes in the future, thereby prejudicing and compromising the effectiveness of the processes set up for the core operational activity of the Department – processing of visa and citizenship applications. In addition, changing the processes continually would come at a cost to the Department.

On balance, I am satisfied that the release would be contrary to the public interest and the documents are exempt under section 47E(d) of the FOI Act.

#### **47G Public interest conditional exemptions—business**

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
  - (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
  - (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*
- (2) *Subsection (1) does not apply to trade secrets or other information to which section 47 applies.*
- (3) *Subsection (1) does not have effect in relation to a request by a person for access to a document:*
  - (a) *by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
  - (b) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
  - (c) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*
- (4) *A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.*
- (5) *For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.*

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

The documents that I have identified as being exempt under section 47G(1)(a) contain information that would disclose information concerning a person, business or organisation in respect of its lawful business, commercial or financial affairs.

I have decided that the disclosure of this information would or could reasonably be expected to, unreasonably affect that person, business or organisation in its lawful undertakings as there is an expectation that the department would securely maintain any information provided to it.

Having formed the view that release of the documents would or could reasonably be expected to unreasonably affect that person, business or organisation I then considered whether the release would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- the right for members of the public to access material about them held by the government, including information used in visa applications;
- applicants exercising rights under the FOI Act; and
- accountability of departmental procedures.

The arguments I have considered in favour of non-disclosure include:

- it is a core Government concern to maintain the integrity of the information it holds including information relating to the business, commercial and financial affairs of an organisation;
- the department is obliged to take action to prevent the unreasonable disclosure of information that may be of commercial or financial value to an organisation.

You have not provided evidence showing that you are the authorised person to act on behalf of **s 22**

I have given greatest weight to the department's obligation to maintain the integrity of the information it holds. This would be contrary to the public interest.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47G(1)(a) of the FOI Act.

Yours sincerely,

Julie

*Electronically signed*

FOI Officer Position no. 60016893

Freedom of Information Section

Department of Home Affairs

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

27 September 2022

## SCHEDULE OF DOCUMENTS TO DECISION RECORD



1. Departmental file number **s 22** - containing 527 pages – Released with exemptions:

Page	Description	Decision	Legislation
91, 92, 93, 96 – 100, 104 – 105, 200, 201	Departmental Internal process	Released with exemptions	47E(d)
110, 129, 130, 131, 136, 137, 217, 238	Relating to <b>s22</b>	Released with exemptions	47G(1)(a)
257, 478, 501	Third party information relating to <b>s22</b>	Released with exemptions	47F(1)

2. Departmental electronic record, Integrated Client Services Environment, Client ID: **s 22**, Request Id **s 22**, Notes Overview, relating to **s 22** – containing 35 pages – containing 35 pages – Released in full.
3. Departmental file number **s 22** – audio recording – Released in full.



23 September 2022

s 22

Email: s22

In reply please quote:

s 22

Dear s22

**Freedom of Information request – Release of documents**

This letter refers to your request received on 7 June 2022 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 07 July 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

### Revocation of deemed refused decision

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

#### *55G Procedure in IC review—revocation or variation of access refusal decision*

- (1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*
- (a) giving access to a document in accordance with the request; or*
  - (b) relieving the IC review applicant from liability to pay a charge; or*
  - (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

- (2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
  - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refused decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

### Revised decision

The Department has identified the documents that fall within the scope of your request. My decision is to refused and exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in **Attachment A**.

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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.

**Contacting the Department**

You can contact us with a general enquiry in a number of ways including by email, through our website, by telephone through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8.30 am and 4.30 pm Monday to Friday. Details on contacting our offices outside Australia are available on our website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).

Yours sincerely

*Electronically Signed*

Geoffrey  
FOI Officer Position number: 00002168  
Freedom of Information Section  
Department of Home Affairs  
Email: xxx.xxx@xxxxxxxxxxxx.xxx.xx

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act

**Attachment A – DECISION RECORD****Client Details****Documents in scope**

1. Departmental file s 22 [redacted]
2. Departmental file s 22 [redacted]
3. System printout - case notes for departmental file s 22 [redacted]

**Information considered**

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. In reaching my decision, I have considered the following:

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

**Reasons for decision**

I have considered the documents 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 reasons for exemptions below.

**22 Access to edited copies with exempt or irrelevant matter deleted (extract)****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.*

A number of documents contain information that is exempt under one or more sections of the FOI Act. I am able to provide you with an edited copy of those documents under section 22(1)(b). You can identify those documents in the Schedule of Documents with the words 'Exempt in part' or 'Refused in part' in the decision column.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

You will see these exemptions in the documents released to you as they will be clearly identified with s 22(1)(a)(ii) however they will not be individually noted in the Schedule of Documents.

The request contains material that is exempt under s7(2A); s33(a)(i) and s47E(d) of the FOI Act.

The request also contains material that I have refused access to under s24A of the FOI Act

My reasons for exemption are set out below:-

## **7 Exemption of certain persons and bodies**

*(2A) An agency is exempt from the operation of this Act in relation to the following documents:*

*(a) a document (an intelligence agency document) that has originated with, or has been received from, any of the following:*

- (i) the Australian Secret Intelligence Service;*
- (ii) the Australian Security Intelligence Organisation;*
- (iii) the Inspector-General of Intelligence and Security;*
- (iv) the Office of National Assessments;*
- (v) the Defence Imagery and Geospatial Organisation;*
- (vi) the Defence Intelligence Organisation;*
- (vii) the Defence Signals Directorate;*

*(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.*

The documents that I have refused access to under section 7(2A) are documents that contain extracts or summaries from an intelligence agency document. Section 7 of the FOI Act provides that certain organisations or documents are not subject to the requirements of the FOI Act. This means that you have no legal right to obtain access to the documents originating from those agencies.

### **33 Documents affecting national security, defence or international relations**

*A document is an exempt document if disclosure of the document under this Act:*

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;*
  - (ii) the defence of the Commonwealth; or*
  - (iii) the international relations of the Commonwealth; or**
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.*

*Note: See also subsection 4(10).*

I have decided that documents that would fall within the scope of this request would be exempt under section 33(a)(i) as they concern the security of the Commonwealth, the disclosure of which could reasonably be expected to cause damage to Australia's security.

In my opinion the expectation of damage to the protection of Australia and its population is a reasonable one, having paid regard to the nature of the information. I am of the view that releasing the material would contribute to a lessening of the value of the information and may reveal methods that are used to gather intelligence information.

### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department's operations.

On the other hand I considered the following in favour of non-disclosure:

- Could reasonably be expected to impede the administration of migration and citizenship laws, including procedural fairness
- Reveal certain operating procedures, the release of which would require the Department to change the way it operates.

The disclosure of documents exempt under section 47E(d) would reveal various methods used by the Department, giving the applicant prior knowledge of the processes of the Department. This could allow applicants to deliberately circumvent certain departmental processes in the future, thereby prejudicing and compromising the effectiveness of the processes set up for the core operational activity of the Department – processing of visa and citizenship applications. In addition, changing the processes continually would come at a cost to the Department.

On balance, I am satisfied that the release would be contrary to the public interest and the documents are exempt under section 47E(d) of the FOI Act.

My reasons for refusal are set out below:-

#### **FREEDOM OF INFORMATION ACT 1982**

##### **- SECT 24A**

*Requests may be refused if documents cannot be found or do not exist*

*Document lost or non-existent*

*An agency or Minister may refuse a request for access to a document if:*

- (a) *all reasonable steps have been taken to find the document; and*
- (b) *the agency or Minister is satisfied that the document:*
  - (i) *is in the agency's or Minister's possession but cannot be found; or*
  - (ii) *does not exist.*

Access to departmental file **s 22** has been refused under section 24A. Section 24A of the FOI Act provides that a request for access to documents may be refused where those documents are in the department's possession but cannot be found or do not exist. Before coming to the conclusion that the documents cannot be found the department must take all reasonable steps to find the documents.

On 21 June 2022, we were advised by Records Management Section that departmental file **s 22** was destroyed by fire on 27 August 2014

Departmental file s 22 [REDACTED] does not exist. On this basis I am refusing you access to  
departmental file s 22 [REDACTED] under section 24A of the FOI Act.

Yours sincerely

*Electronically Signed*

Geoffrey  
FOI Officer Position number: 00002168  
Freedom of Information Section  
Department of Home Affairs  
Email: xxx.xxx@xxxxxxxxxxx.xxx.xx

## Attachment B - SCHEDULE OF DOCUMENTS



1. Departmental File: s 22 - containing 109 pages

Page	Description	Decision	Legislation
1-3	Departmental identity investigation	Exempt in part	s47E(d)
109	Departmental identity investigation	Exempt in full	s47E(d)

Note: the remainder of the file has been released in full

2. Departmental File: s 22

Page	Description	Decision	Legislation
	Entire file	Refused in full	s24A

3. System printout: case notes for s 22 - containing 39 pages

Page	Description	Decision	Legislation
23	Case assessment	Exempt in part	s7(2A)
24-25	Case assessment	Exempt in part	s33(1)(a)(i)
37	Case assessment	Exempt in part	s33(1)(a)(i)

Note: the remainder of the file has been released in full



Australian Government  
Department of Home Affairs

4 October 2022

s 22

Daniel's Migration Solutions  
3 Madigan Court  
ROXBURGH PARK VIC 3064

Email: s22

In reply please quote:

s 22

Dear s22

**Access Decision - Freedom of Information (FOI) request**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 21 May 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 20 June 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

- (1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*
- (a) *giving access to a document in accordance with the request; or*
  - (b) *relieving the IC review applicant from liability to pay a charge; or*
  - (c) *requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

- (2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
- (a) *the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
  - (b) *the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

#### **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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

#### **Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in

#### **Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

#### **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 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

FOI Officer Position no.60046911 (Devinder)  
Freedom of Information Section  
Department of Home Affairs

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

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



## Attachment A – Decision Record

### Client Details

s 22

### Scope of Request

s 22

### Departmental records within scope

No.	Description	Reference (if applicable)	No. of folios
1.	Departmental File	s 22	16
2.	Departmental File		42
3.	Departmental File		44
4.	Departmental File		9
5.	Departmental File		136
6.	Electronic records from ICSE- notes		60

### 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*;
- the Australian Information Commissioner’s FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above)

### Reasons for decision

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

**22 Access to edited copies with exempt or irrelevant matter deleted (extract)***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.*

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.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request

You will see these exemptions in the documents released to you as they will be clearly identified with s.22 (1)(a)(ii) however they will not be individually noted in the Schedule of Documents.'

I have decided that parts of the documents would disclose information that could reasonably be regarded as irrelevant to your request. This information consists of sponsor's passport copy.

The schedule 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.

**s37 :Documents affecting enforcement of law and protection of public safety**

- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;*

**Section 37(2)(b)**

The information which I have exempted under section 37(2)(b) is information which, if disclosed, would reveal lawful methods or procedures used by the department to investigate complaints and would be reasonably likely to prejudice the effectiveness of those methods or procedures.

I believe disclosure of this information would reasonably compromise the department's investigation strategy by revealing the department's methods of investigating concerns and in so doing would compromise the department's ability to successfully utilise such methods or procedures in the future.

It is important that these processes are kept confidential to prevent officers from circumventing these procedures, or from providing false information during these investigations. Release of this information would prejudice the effectiveness of the referral process, and the attainment of true and correct information.

FOI Officer Position no.60046911 (Devinder)  
Freedom of Information Section  
Department of Home Affairs

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



### Attachment B – Schedule of Documents

**Client Details**

**s 22**

**Departmental File s 22**

Page No.	Description	Decision	Legislation
1-80		Released in full	
81-84	Investigation methods and procedures	Exempt in part	s.37(2)(b)
85-136		Released in full	

**Electronic Records**

Document No.	No of folios	Description	Decision	Legislation
<b>s22</b>	60	<b>s22</b>	Released in full	
	16		Released in full	
	42		Released in full	
	44		Released in full	
	9		Released in full	



27 September 2022

Sent via email to: s 22

s 22

In reply please quote:

s 22

Dear s22

**Freedom of Information request – Revised decision**

s22 the applicant, has authorised you to receive, on his behalf, correspondence about his Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 9 December 2021, seeking access to:

From Form 424A attached to your representative's email:

s22

From your representative's email:

s 22

On 22 December 2021, the Department interpreted the scope of your request seeking access to:

s 22

This was acknowledged to your representative on that day.

On 10 January 2022, your representative replied to this acknowledgement letter stating:

s 22

Following the latest correspondence from your representative on 10<sup>th</sup> January 2022, the Department has taken the scope of your request to be seeking access to:

s 22

#### **Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 8 January 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

#### **Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

##### *55G Procedure in IC review—revocation or variation of access refusal decision*

*(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
  - (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*

(b) *the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below)

### Revised decision

The Department has identified the documents that fall within the scope of your request.

My decision is to release in full the documents in the possession of the Department, which falls within the scope of your request. A list of the documents is below for your reference.

### Documents in scope

No.	Description	Reference (if applicable)	No. of folios
1.	Relevant folios from file s 22	s 22	2

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff. This includes their names, direct email addresses and also mobile and direct work telephone numbers of these staff. This material has therefore been removed under s22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

### 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 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,

Elizabeth (Position Number: 60046910)  
 Authorised FOI Officer  
 Freedom of Information Victoria  
 Department of Home Affairs  
 Email: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

### Attachments

Documents released to you under the FOI Act (sent via email)



Australian Government  
Department of Veterans' Affairs

s 22

## Revised decision made under section 55G of the *Freedom of Information Act 1982*

Decision and reason for decision of Stella (Position Number 62331110),  
Executive Director, Information Access Unit,  
Client Access and Rehabilitation Branch, Department of Veterans' Affairs

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Applicant: s 22

Date of primary decision: 29 April 2022

FOI reference number: s 22

Revised decision date: 27 September 2022

Revised decision reference number: s 22

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Dear s 22

### Freedom of Information Request: s 22

1. The purpose of this correspondence is to advise you of a revised decision the Department of Veterans' Affairs (**Department**) has made under section 55G of the *Freedom of Information Act 1982* (**FOI Act**) in relation to s 22

### Revised Decision

2. I have made a decision to vary the original decision made by Joanna, Position Number 62329542, Information Access Officer, Information Access Unit. That decision was to provide full access to the document with deletions under section 22 of the FOI Act to remove staff names and position numbers.
3. I have made a decision to grant full access with the previous section 22 deletions removed.

### Authority to make decision

4. I, Stella (Position Number 62331110), Executive Director, Information Access Unit, Client Access Rehabilitation Branch, am an officer authorised by the Secretary of the Department

to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

## Summary

5. On 9 March 2022, you made a request for information under the FOI Act. Your request sought access to:



6. On 15 March 2022, the department acknowledged your request, in accordance with the timeframes prescribed by s 15(5(a) of the FOI Act.
7. On 8 April 2022, the OAIC granted the department an extension of time under s 15AB(2) of the FOI Act altering the due date to 29 April 2022.
8. On 29 April 2022, the department sent you the decision to *'grant access in full to the documents with irrelevant material deleted under s 22 of the FOI Act'*. The document was released to the email address listed as the address for notices to be received under the FOI Act when the request was made.
9. On 14 July 2022, the Office of the Australian Information Commissioner (**OAIC**) sent the Department a notice of Request for IC review and Preliminary Inquiries under s 54V of the FOI Act.

## Reasons for decision

10. I have decided to **grant access** to the document within the scope of your request, with the previous deletions under section 22 of the FOI Act removed.

## Access to documents

11. The document released to you in accordance with the FOI Act is enclosed.

## Application for Information Commissioner Review – request to withdraw application

12. I consider the Department to have satisfactorily resolved the issues you have identified. As such, I kindly ask you to consider withdrawing your application for review with the OAIC.

## Your rights of review

13. If you are dissatisfied with my decision, you may advise the OAIC that you do not wish to withdraw your application for IC Review.
14. You can contact the OAIC in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level 3, 175 Pitt Street, Sydney NSW 2000

15. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner:  
<http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

## Contact us

16. If you wish to discuss this decision, please do not hesitate to contact the Information Access Unit using the following details:

**Online:** <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>  
**Post:** Information Access Unit  
Department of Veterans' Affairs

GPO Box 9998, Brisbane QLD 4001

**Phone:** 1800 838 372

**Email:** [Information.Access@dva.gov.au](mailto:Information.Access@dva.gov.au)

Yours sincerely,

Stella

Position Number 62331110

Executive Director

Information Access Unit

Client Access and Rehabilitation Branch

Department of Veterans' Affairs

27 September 2022



## Schedule of documents

Applicant: **s 22**

Date of primary decision: 29 April 2022

FOI reference number: **s 22**

Revised decision date: 27 September 2022

Revised decision reference number: **s 22**

Doc No.	Date of document	Document description	Pages	Decision	Exemption provision
1	03/02/2022	Email sent from <a href="mailto:Information.Law@dva.gov.au">Information.Law@dva.gov.au</a> to <b>s 22</b>	1 – 2	Full Release	N/A
2	N/A	Document created pursuant to section 17 of the FOI Act, including, <ul style="list-style-type: none"> <li>- Table created by the department to respond to applicant's request, and</li> <li>- Email 'properties' of email sent from <a href="mailto:Information.Law@dva.gov.au">Information.Law@dva.gov.au</a> to <b>s 22</b></li> </ul>	3 – 5	Full Release	N/A



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

### 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).

**15 Requests for access (as related to the requirements for requests)***Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

*Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

**17 Requests involving use of computers etc**

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

- (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
  - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
  - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

## 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.

**26 Reasons and other particulars of decisions to be given**

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
  - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
  - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

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

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
  - (i) his or her rights with respect to review of the decision;
  - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
  - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document. (see section 11A).

**55G Procedure in IC review--revocation or variation of access refusal decision**

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision ) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision ) would have an effect of:
  - (a) giving access to a document in accordance with the request; or
  - (b) relieving the IC review applicant from liability to pay a charge; or
  - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
  - (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
  - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.



13 October 2022

Sent via email to: s 22

s 22

Visa Assist Australia  
PO Box 133  
ALSTONVILLE NSW 2477

s 22

Dear s 22

### Freedom of Information request – Revised decision

s 22 the applicant, has authorised you to receive, on s 22 behalf, correspondence about her Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 25 June 2022, seeking access to:

s 22

### Deemed refused decision

A 'deemed refusal' has occurred as the time for making a decision has expired on 25 July 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents (identified below)

**Revised decision**

The Department has identified the documents that fall within the scope of your request.

My decision is to release in full the documents in the possession of the Department, which fall within the scope of your request. A list of the documents is below for your reference.

No.	Description	Reference (if applicable)	No. of folios
1.	Departmental file	s 22	230

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

**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 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

Elizabeth (Position Number: 60046910)  
Authorised FOI Officer  
Freedom of Information Victoria  
Department of Home Affairs  
Email: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

**Attachments**

- Documents released to you under the FOI Act (sent via email)



13 October 2022

Our reference: s 22

s 22

Only by email: s 22

Dear s 22

### Decision on your Freedom of Information Request

I refer to your request to Services Australia (the Agency) dated 28 January 2022, for access under the *Freedom of Information Act 1982* (FOI Act) to:

s 22

I am writing to provide you with a revised decision under section 55G of the FOI Act. This decision has the effect of releasing information to you.

#### Original decision

The Agency was required to provide you with a decision in relation to your request by 19 April 2022. As a decision was not provided to you by this date, the principal officer of the Agency was deemed to have refused your request under section 15AC(3) of the FOI Act.

#### Revised Decision – Section 55G of the FOI Act

I am authorised to make decisions under section 23 of the FOI Act.

Section 55G of the FOI Act provides that the Agency may vary, or set aside and substitute, the original decision at any time during an IC review if the variation or substitution would have an effect of, among other things, providing access to documents sought in accordance with a request.

In accordance with section 55G of the FOI Act, I have decided to set aside the Agency's deemed refusal decision. In substitution for the decision set aside, I have decided to:

- grant you **full access** to 5 documents (Documents 6, 20 - 22, 39)
- grant you **part access** to 35 documents (Documents 1 - 5, 7 - 19, 23 - 38, 40) with some of the content removed, and
- grant you **part access** to 2 Microsoft Excel spreadsheets (Documents 41 - 42) in document form with some of the content removed.

I am satisfied parts of documents you have requested are exempt under the FOI Act, on the basis they contain:

- deliberative matter, the disclosure of which is contrary to the public interest (section 47C of the FOI Act)

- information which, if released, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency, and disclosure of which would be contrary to the public interest (section 47E(d) of the FOI Act)
- information about third parties, the disclosure of which is prohibited under provisions of the child support legislation specified in Schedule 3 of the FOI Act (section 38 of the FOI Act), and
- personal information of other people, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1) of the FOI Act).

Please see [Attachment A](#) to this letter for a detailed list of the documents and the reasons for my decision, including the relevant sections of the FOI Act.

### **How we will send the documents to you**

The documents for release are attached to the email containing this letter. As pages 129 - 132 have been determined to be exempt in full, these pages have not been provided to you.

### **Review rights**

If you are dissatisfied with this decision, you are entitled to continue with your Information Commissioner review. You can obtain more information about this process from the Office of the Australian Information Commissioner.

### **Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

Colette  
Authorised FOI Decision Maker  
Freedom of Information Team  
Information Access Branch | Legal Services Division  
Services Australia

## SCHEDULE OF DOCUMENTS

§ 22

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
1.	1 - 8	Various	Incident Record	Release in part	s38 s47E(d)	Information deleted under s38 (protected information) Operational information deleted under s47E(d) Staff details deleted under s22 (out of scope)
2.	9 - 33	Various	Incident Log	Release in part	s47E(d)	Operational information deleted under s47E(d) Staff details deleted under s22 (out of scope)
3.	34 - 41	Various	Change Request	Release in part	s47E(d) s47F(1)	Operational information deleted under s47E(d) Personal information of third parties deleted under s47F(1) Staff details deleted under s22 (out of scope)
4.	42 - 45	Various	Change Request	Release in part	s47E(d)	Operational information deleted under s47E(d) Staff details deleted under s22 (out of scope)
5.	46 - 51	Various	Change Request	Release in part	s47E(d)	Operational information deleted under s47E(d) Staff details deleted under s22 (out of scope)

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
6.	52 - 57	N/A	Analysis	Release in full	N/A	N/A
7.	58 - 62	06/09/2021	Internal correspondence	Release in part	s47E(d) s47F(1)	Operational information deleted under 47E(d) Personal information of third parties deleted under s47F(1) Staff details deleted under s22 (out of scope)
8.	63 - 66	26/08/2021	Internal correspondence	Release in part	s47E(d) s38	Operational information deleted under s47E(d) Information deleted under s38 (protected information) Staff details deleted under s22 (out of scope)
9.	67 - 69	01/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
10.	70 - 71	02/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
11.	72 - 74	03/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
12.	75 - 76	06/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
13.	77 - 78	10/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
14.	79 - 80	13/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
15.	81 - 82	14/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
16.	83 - 84	15/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
17.	85 - 88	31/08/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
18.	89 - 90	08/09/2021	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
19.	91 - 96	03/09/2021	Internal correspondence	Release in part	s47E(d) s47F(1)	Operational information deleted under 47E(d) Personal information of third parties deleted under s47F(1)
20.	97 - 98	06/09/2021	Internal correspondence	Release in full	N/A	Staff details deleted under s22 (out of scope)

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
21.	99	Various	LEX screen system	Release in full	N/A	Staff details deleted under s22 (out of scope)
22.	100 - 101	Various	LEX file notes	Release in full	N/A	Staff details deleted under s22 (out of scope)
23.	102 - 132	Various	Contact and complaint record	Release in part	s38	Protected information deleted under s38 (secrecy provisions) Staff details deleted under s22 (out of scope)
24.	133 - 134	Various	Chronology	Release in part	s38	Protected information deleted under s38 (secrecy provisions)
25.	135 - 142	06/01/2022	Internal communication	Release in part	s 47E(d)	Operational information deleted under s47E(d)
26.	143 - 148	-	Draft communication	Release in part	s38 s47C s47E(d)	Protected information deleted under s38 (secrecy provisions) Deliberative material deleted under s47C Operational information deleted under s47E(d)
27.	149 - 154	-	Draft communication	Release in part	s38 s47C s47E(d)	Protected information deleted under s38 (secrecy provisions) Deliberative material deleted under s47C Operational material deleted under s47E(d)

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
28.	155 - 159	-	Draft communication	Release in part	s38 s47C s47E(d)	Protected information deleted under s38 (secrecy provisions) Deliberative material deleted under s47C Operational material deleted under s47E(d)
29.	160 - 164	06/01/2022	Response to Ombudsman	Release in part	s38 s47E(d)	Protected information deleted under s38 (secrecy provisions) Operational material deleted under s47E(d)
30.	165 - 166	17/12/2021	Internal correspondence	Release in part	s38 s47E(d)	Protected information deleted under s38 (secrecy provisions) Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
31.	167 - 169	17/12/2021	Internal correspondence	Release in part	s38 s47E(d) s47F(1)	Protected information deleted under s38 (secrecy provisions) Operational information deleted under 47E(d) Personal information of third parties deleted under s47F(1) Staff details deleted under s22 (out of scope)

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
32.	170 - 176	Various	Internal correspondence	Release in part	s47E(d) s47F(1)	Operational information deleted under 47E(d) Personal information of third parties deleted under s47F(1) Staff details deleted under s22 (out of scope)
33.	177	06/01/2022	Internal correspondence	Release in part	s47E(d)	Operational information deleted under 47FE(d) Staff details deleted under s22 (out of scope)
34.	178 - 179	06/01/2022	Internal correspondence	Release in part	s38 s47E(d)	Protected information deleted under s38 (secrecy provisions) Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
35.	180 - 181	15/12/2021	Internal correspondence	Release in part	s38 s47E(d)	Protected information deleted under s38 (secrecy provisions) Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
36.	182 - 184	Various	Internal correspondence	Release in part	s38 s47E(d) s47F(1)	Protected information deleted under s38 (secrecy provisions) Operational information deleted under 47E(d) Personal information of third parties deleted under s47F(1) Staff details deleted under s22 (out of scope)

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
37.	185 - 189	-	Draft communication	Release in part	s38 s47E(d) s47C	Protected information deleted under s38 (secrecy provisions) Operational material deleted under s47E(d) Deliberative material deleted under s47C
38.	190	15/12/2021	Internal correspondence	Release in part	s38 s47E(d)	Protected information deleted under s38 (secrecy provisions) Operational information deleted under 47E(d) Staff details deleted under s22 (out of scope)
39.	191 - 194	29/08/2021	Internal correspondence	Release in full	N/A	Staff details deleted under s22 (out of scope)
40.	195	24/09/2021	Internal correspondence	Release in part	s47E(d)	Operational material deleted under s47E(d) Staff details deleted under s22 (out of scope)
41.	-	-	Analysis	Release in part	s38	Protected information deleted under s38 (secrecy)
42.	-	-	Analysis	Release in part	s38	Protected information deleted under s38 (secrecy)

## REASONS FOR DECISION

On 28 January 2022, you requested:

s 22

On the same date, the Agency acknowledged your request and advised we would not include personal details about our staff (such as their names). You did not contact the Agency again about this. Staff details have therefore been redacted in accordance with section 22(1) of the FOI Act.

On 1 April 2022, your request was deemed to have been refused pursuant to section 15AC(3) of the FOI Act.

On 18 July 2022, a delegate of the Australian Information Commissioner issued a direction under section 55(2)(e)(ii) of the FOI Act for the Agency to make a revised decision under section 55G of the FOI Act,

In accordance with the direction issued by the delegate of the Australian Information Commissioner, a copy of this decision and documents provided to you will also be provided to the Office of the Australian Information Commissioner.

### What I took into account

In reaching my decision I took into account:

- Your request dated 28 January 2022
- documents falling within the scope of your request
- whether the release of material is in the public interest
- consultations with Agency officers about:
  - the nature of the documents
  - the Agency's operating environment and functions
- relevant provisions in the *Child Support (Assessment) Act 1989* (Assessment Act) and the *Child Support (Registration and Collection) Act 1988* (Registration and Collection Act)
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, and
- the FOI Act.

### Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act.

### Secrecy provisions

I have applied the exemption in section 38 to the documents identified in the schedule.

This section of the FOI Act requires an Agency to refuse access to a document if its disclosure is prohibited under a provision of an enactment, and that provision is specified in Schedule 3 of the FOI Act. Section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act are secrecy provisions listed in Schedule 3 of the FOI Act.

Section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act restrict the communication of 'protected information' and specify when and to whom this type of information can be lawfully released. 'Protected information' is defined as information concerning a person communicated to another person in the course of, or because of, the other person's duties under the Assessment Act and the Registration and Collection Act.

I have found the documents outlined in the schedule contain information 'protected information', being information obtained by the Agency for the purposes of those Acts'.

There are exceptions to the prohibition on the release of 'protected information'. These exceptions include but are not limited to assisting to locate a missing person or administering a deceased estate. I am satisfied none of the relevant exceptions apply in the circumstances of this request, and therefore the disclosure of the third party information is prohibited under section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act.

Secrecy provisions do not apply where the information contained in a document contains information solely about you. As I have found that some of the information in the documents only relates to you, this information can be released to you in accordance with section 38(2) of the FOI Act.

However, other parts of the documents contain information relating solely to a third party and 'mixed personal information' about you and a third party that is not reasonably practicable to separate. Section 38(2) of the FOI Act does not apply to these parts of the documents, and they are therefore exempt under section 38(1). As a result, I have decided to only grant access in part to these documents.

### Deliberative material

I have applied the exemption in section 47C of the FOI Act to the documents identified in the schedule.

Section 47C of the FOI Act provides a document is conditionally exempt if it would disclose deliberative matter. Deliberative matter is an opinion, advice or recommendation, or a consultation or deliberation that has taken place in the course of, or for the purposes of, the deliberative processes of an Agency. Material which is operational or purely factual information is not deliberative.

The deliberative exemption also does not apply to reports of scientific or technical experts, reports of a body or organisation prescribed by the regulations, or a formal statement of reasons.

I am satisfied the material to which this conditional exemption has been applied contains recommendations, opinions and advice, and information related to the deliberative process

regarding the response to a notice of investigation by the Commonwealth Ombudsman under section 8 of the *Ombudsman Act 1976 (Cth)*. This includes opinions exchanged and deliberations on the proposed response.

I am also satisfied the information to which this conditional exemption has been applied is not operational information or purely factual information, and is otherwise not of a kind specifically excluded by the FOI Act. I further note that the conditional exemption has not been applied to information in the documents which is in the public domain.

Accordingly, I am satisfied the information, as outlined in the schedule, is conditionally exempt under section 47C of the FOI Act.

#### *Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of the material would generally promote the objects of the FOI Act, which is in the public interest. However, I also consider that disclosure could reasonably be expected to prejudice the provision of advice to the Commonwealth Ombudsman and impede the candour and frankness required for Government decision making in determining how to respond to a notice of notice of investigation by the Commonwealth Ombudsman under section 8 of the *Ombudsman Act 1976 (Cth)*.

As such, I find the public interest in disclosing the material is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

#### Operations of the Agency

I have applied the conditional exemption in section 47E(d) of the FOI Act to parts of the documents identified in the Schedule.

This section of the FOI Act allows the Agency to determine that a document is exempt from release if its disclosure would have a serious or significant effect on the Agency's ability to conduct its operations efficiently and properly.

#### *Information about the Agency's computer systems*

Parts of the documents in question contain details about how information is stored on the Agency's computer systems.

The Agency's computer systems are critical to the proper and efficient delivery of its functions. Unauthorised access of these systems would have a substantial adverse effect on the Agency's operations by compromising computer system availability and integrity, as well as the confidentiality of customers' information.

Providing access to this material would provide detailed information to malicious actors about the design of the Agency's computer systems. The disclosure of this material to the world at large through the FOI process could reasonably be expected to increase the risk of unauthorised access to the Agency's computer systems.

For the reasons detailed above, I am satisfied parts of the documents are conditionally exempt under section 47E(d) of the FOI Act.

#### *Positional mailboxes*

The documents in question contain references to positional mailboxes which are not publicly available. I am satisfied the positional mailboxes are relevant to the conduct of the Agency's operations - namely, the provision of services to the Australian public.

I consider disclosing these internal positional mailboxes would negatively affect the conduct of the operations of the Agency because these details are intended to be used only to facilitate confidential and prompt communications within the Agency.

In my view, releasing the contact details of identified teams to the world-at-large is likely to result in an increased workload for the relevant teams as they would be diverted from their usual duties to respond to or redirect enquiries from people outside the Agency, which may result in communications being duplicated or double-handled as a result of being directed to the wrong team. I also consider that release of this information is likely to lead to an unreasonable increase in enquiries made through the relevant mailboxes, which would be an inappropriate use of the Agency's resources and is likely to result in inefficiencies.

Given the Agency's interactions with the public number in the millions, diverting people from the correct, publicly-available channels cannot be considered insubstantial or nominal.

#### *Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of the material would not promote the objects of the FOI Act and there is little to no public interest in the material being released.

On the other hand, I consider the disclosure of the exempted material would have a significant and detrimental impact on the Agency's ability to properly and efficiently deliver services to the Australian public.

Overall, I find the public interest in disclosing internal positional mailbox details is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

#### Unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) of the FOI Act to documents as identified in the schedule.

This section of the FOI Act allows the Agency to redact material from a document if its release would involve the unreasonable disclosure of personal information about any person.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable. It can include information such as a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature. I am satisfied the documents contain personal information, being direct telephone numbers and office locations of senior executive staff within the Agency.

I am satisfied the disclosure of the information would be unreasonable as the information is private, not publicly available, and would not be reasonably known to you.

*Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of personal information contained in the documents would not promote the objects of the FOI Act and there is little to no public interest in the material being released. I also consider disclosure would prejudice the individuals' right to privacy and adversely affect their interests. I consider there is a persuasive argument for ensuring their right to privacy where their personal information contained in the documents is not reasonably known to you.

As such, I find the public interest in disclosing the material is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.



12 October 2022

Our reference: s 22

s 22

Only by email: s 22

Dear s 22

### **Decision on your Freedom of Information request**

I refer to your revised request to Services Australia (the Agency) dated 10 February 2022, for access to documents under the *Freedom of Information Act 1982* (FOI Act). Your request was made in the following terms:

s 22

I am writing to provide you with a revised decision under section 55G of the FOI Act. This decision has the effect of releasing information to you.

#### **Original decision**

The Agency was required to provide you with a decision in relation to your request on 13 April 2022. As a decision was not provided to you by this date, the principal officer of the Agency was deemed to have refused your request under section 15AC(3) of the FOI Act.

#### **Revised Decision – Section 55G of the FOI Act.**

I am authorised to make decisions under section 23 of the FOI Act.

Section 55G of the FOI Act provides the Agency may vary, or set aside and substitute, the original decision at any time during an IC review if the variation or substitution would have an effect of, among other things, providing access to documents in accordance with a request.

In accordance with section 55G of the FOI Act, I have decided to set aside the Agency's deemed refusal decision. In substitution for the decision set aside, I have decided to grant you part access to 4 documents (Documents 1 - 4) with some of the content removed.

I have decided that certain parts of Documents 1 - 4 are exempt under the FOI Act, including:

- information about third parties, the disclosure of which is prohibited under provisions of the child support legislation specified in Schedule 3 of the FOI Act (section 38 of the FOI Act), and
- information which, if released, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency, and disclosure of which would be contrary to the public interest (section 47E(d) of the FOI Act)

Please see the schedule at Attachment A to this letter for a detailed list of the documents and the reasons for my decision, including the relevant sections of the FOI Act.

### **How we will send your documents to you**

The documents are attached to the email containing this letter.

### **Review rights**

If you are dissatisfied with this decision, you are entitled to continue with your Information Commissioner review. You can obtain more information about this process from the Information Commissioner.

### **Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au).

Yours sincerely

Colette  
Authorised FOI Decision Maker  
Freedom of Information Team  
Information Access Branch | Legal Services Division  
Services Australia

## SCHEDULE OF DOCUMENTS FOR RELEASE

**s 22**

Doc No.	Pages	Date	Description	Decision	FOI Act Exemption	Comments
1.	1 - 5	06/01/2021	External communication	Release in part	s38 s47E(d)	Information deleted under s38 (protected information) Operational information deleted under 47E(d)
2.	6 - 25	Various	Contact and complaint record	Release in part	s38	Information deleted under s38 (protected information) Staff details deleted under s22 (out of scope)
3.	26 - 28	Various	Objection chronology	Release in part	s38	Information deleted under s38 (protected information)
4.	29 - 36	Various	Internal communication	Release in part	s47E(d)	Operational information deleted under 47E(d)

## REASONS FOR DECISION

### Background

On 10 February 2022, you made a freedom of information request in the following terms:



On the same date, the Agency acknowledged your original request and advised we would not include personal details about our staff (such as their names). You did not contact the Agency again about this. Staff details have therefore been redacted in accordance with section 22(1) of the FOI Act.

On 13 March 2022, your request was deemed to have been refused pursuant to section 15AC(3) of the FOI Act.

On 18 July 2022, a delegate of the Australian Information Commissioner issued a direction under section 55(2)(e)(ii) of the FOI Act for the Agency to make a revised decision under section 55G of the FOI Act.

In accordance with the direction issued by the delegate of the Australian Information Commissioner, a copy of this decision and documents provided to you will also be provided to the Office of the Australian Information Commissioner.

### What I took into account

In reaching my decision I took into account:

- your original request dated 10 February 2022
- the documents that fall within the scope of your request
- whether the release of material is in the public interest
- consultations with Agency officers about
  - the nature of the documents
  - the Agency's operating environment and functions
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, and

- the FOI Act.

### **Reasons for my decision**

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided parts of Documents 1 - 4 as identified in the schedule are exempt under the FOI Act. My findings of fact and reasons for deciding that the exemption applies to those documents are discussed below.

#### Operations of the Agency

I have applied the conditional exemption in section 47E(d) of the FOI Act to parts of Documents 1 and 4 as identified in the schedule.

This section of the FOI Act allows the Agency to determine a document is exempt from release if its disclosure would have a serious or significant effect on the Agency's ability to conduct its operations efficiently and properly.

The documents contain references to positional mailboxes which are not publicly available. I am satisfied the positional mailboxes are relevant to the conduct of the Agency's operations, namely, the provision of services to the Australian public.

I consider disclosing these internal positional mailboxes would negatively affect the conduct of the operations of the Agency because these details are intended to be used only to facilitate confidential and prompt communications within the Agency.

In my view, releasing the contact details of identified teams to the world-at-large is likely to result in an increased workload for the relevant teams as they would be diverted from their usual duties to respond to or redirect enquiries from people outside the Agency, which may result in communications being duplicated or double-handled as a result of being directed to the wrong team. I also consider that release of this information is likely to lead to an unreasonable increase in enquiries made through the mailbox, which would be an inappropriate use of the Agency's resources and is likely to result in inefficiencies.

Given the Agency's interactions with the public number in the millions, diverting people from the correct, publicly-available channels cannot be categorised as insubstantial or nominal.

#### *Public interest considerations*

Access to conditionally exempt material must be given unless I am satisfied it would not be in the public interest to do so.

I consider the disclosure of the material would not promote the objects of the FOI Act and there is little to no public interest in the material being released. On the other hand, I consider the disclosure of the exempted material would have a significant and detrimental impact on the Agency's ability to properly and efficiently deliver services to the Australian public.

Overall, I find the public interest in disclosing the internal positional mailbox details is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

#### Secrecy provisions

I have applied the exemption in section 38 of the FOI Act to Documents 1, 2 and 3 as outlined in the schedule.

This section of the FOI Act requires an agency to refuse access to a document if its disclosure is prohibited under a provision of an enactment, and that provision is specified in Schedule 3 of the FOI Act. Section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act are secrecy provisions listed in Schedule 3 of the FOI Act.

Section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act are secrecy provisions that restrict the communication of 'protected information' and specify when and to whom this type of information can be lawfully released. 'Protected information' is defined as information concerning a person communicated to another person in the course of, or because of, the other person's duties under the Assessment Act and the Registration and Collection Act.

In practice, these secrecy provisions create a strict privacy regime when applied to child support documents that are the subject of FOI requests, such that third party protected information cannot be disclosed by the Agency, even when the information concerns an applicant or could reasonably be assumed to be known to an applicant.

I have found the documents outlined in the schedule contain information 'protected information', being information obtained by the Agency for the purposes of those Acts.

The general prohibition on the communication of third party 'protected information' in section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act are subject to specific exceptions provided by section 150 and section 16 of those respective Acts.

Alternatively, the third party concerned would need to consent to the release of their information.

I am satisfied none of these exceptions apply in the circumstances of this request, and therefore the disclosure of the third party information is prohibited under section 150(2)(b) of the Assessment Act and section 16(2)(b) of the Registration and Collection Act.

Secrecy provisions do not apply where the information contained in a document contains information solely about you. I have found some of the information in the documents only relates to you. This information can be released to you in accordance with section 38(2) of the FOI Act.

However, other parts of the documents contain information solely relating to a third party and 'mixed personal information' about you and a third party that is not reasonably practicable to separate. Section 38(2) of the FOI Act does not apply to these parts of the documents, and they are therefore exempt under section 38(1) of the FOI Act. As a result, I have decided to only grant access in part to the documents.



14/10/2022

s 22

Victoria Legal Aid  
GPO Box 4380  
MELBOURNE VIC 3001  
AUSTRALIA

Email: migration@vla.vic.gov.au

In reply please quote:

s 22

Dear s22

**Freedom of Information request – Revised decision**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 21 March 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 20/04/2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refused decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;

- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

**Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in **Attachment A**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

*Electronically signed*

FOI Officer

Jai

Position no. 60016895

Freedom of Information Section

Department of Home Affairs

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

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act

**Attachment A – DECISION RECORD****Client Details****Documents in scope:**

- Departmental File: s 22
- ICSE screenshot of s 22
- s 22

**Information considered**

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. In reaching my decision, I have considered the following:

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

**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.

**22 Access to edited copies with exempt or irrelevant matter deleted (extract)***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.*

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.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

### ***37 Documents affecting enforcement of law and protection of public safety***

(1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law;*

Section 37(1)(b) is intended to protect the identity of a confidential source of information connected with the administration or the enforcement of the law.

In the OAIC Guidelines, paragraph 5.92 states,

The exemption applies where:

- the information in question may enable the agency responsible for enforcing or administering a law to enforce or administer it properly.
- The person who supplies that information wishes his or her identity to be known only to those who need to know it for the purpose of enforcing or administering the law
- The information was supplied on the understanding, express or implied, that the source's identity would remain confidential.

Section 37(1)(b) provides that a document will be exempt if its disclosure under the FOI Act would disclose or enable a person to ascertain the existence or identity of a confidential source of information or the non-existence of a confidential source of information in relation to the enforcement or administration of the law.

I believe that the release of these documents may disclose the confidential source of the information and that the identity of the confidential source may be ascertainable from the

contents of the documents. The information was supplied to the department on an expectation that the identity of the confider would remain confidential.

The department has a policy of not disclosing the identity of persons providing information to the department in the absence of their consent or unless there are compelling reasons for so doing. The department relies on persons or organisations to supply information to it so that it can enforce migration law. If the department were to disclose the identity of such suppliers it may discourage individuals from providing such information to the department in the future and would be detrimental to the department in enforcing the law.

On that basis I am refusing you access under section 37(1)(b) to the information in the documents.

**38 Documents to which secrecy provisions of enactments apply**

- (1) *Subject to subsection (1A), a document is an exempt document if:*
- (a) *disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and*
  - (b) *either:*
    - (i) *that provision is specified in Schedule 3; or*
    - (ii) *this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.*
- (1A) *A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.*
- (2) *Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.*
- (3) *This section applies in relation to a document so far as it contains personal information about a person if:*
- (a) *the person requests access to the document; and*
  - (b) *disclosure of the document, or information contained in the document, is prohibited under section 503A of the Migration Act 1958 as affected by section 503D of that Act.*
- (4) *In this section:*

**enactment** includes a Norfolk Island enactment.

I have made a decision not to grant access to these documents as I am of the opinion that these documents are exempt documents under section 38 of the FOI Act. The release of the documents is prohibited under section 503A as affected by section 503D of the *Migration Act 1958*.

The information contained within the documents has been communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information

and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C.

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the department's operations and that there is no overriding public interest in favour of disclosure.



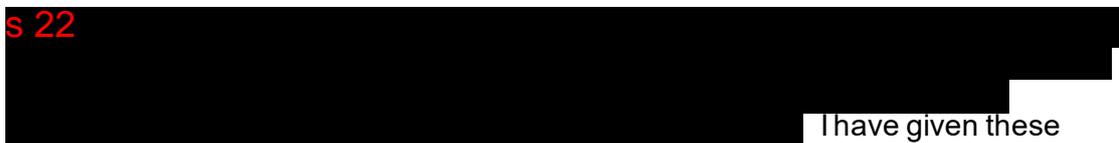
Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the department's operations.
- The extent to which the information is known by the public.

On the other hand I considered the following in favour of non-disclosure:

- Reveal covert operating procedures, the release of which would require the department to change the way it operates.
- could reasonably be expected to prejudice security, law enforcement, public health or public safety
- Release could prejudice the management function of the department.
- The information is not already known to the public.



I have given these factors the most weight. I therefore believe that releasing this information would be contrary to the public interest.

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

*(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.*

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

Having formed the view that the documents are of a kind to which section 47F does apply, I am required to consider whether disclosure of the documents would be unreasonable. I took the following information into consideration:

- The information appears on a file that holds your personal information. This weighs in favour of the release being reasonable.
- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.

On balance I believe it would be unreasonable to release these documents in their complete format.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- a person having a general right of access to any material about them held by the government;
- Promote the objects of the FOI Act
- there is a general public interest in making information held by the Government accessible to the public;
- the extent to which the information is known by the public.

Arguments against disclosure of the documents include:

- The information is not already known to the public.

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

The information contained within the identified 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.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

Yours sincerely,

*Electronically signed*

FOI Officer

Jai

Position no. 60016895

Freedom of Information Section

Department of Home Affairs

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

## Attachment B - SCHEDULE OF DOCUMENTS



- Departmental File: **s 22**

Pages	Description	Decision	Legislation
12-15, 18-21, 24-25 28-30, 32, 36, 42-43, 58-67, 69-70 169, 235-244, 246 247, 346, 408-417, 419 420 519, 579-580 583-592 594-595 694, 796, 883, 940, 990-992 996, 1009-1010, 1040, 1128-1130, 1154 1167-1168, 1239, 1243 1252, 1345, 1353, 1443 1445, 1450, 1456-1457 1459, 1482, 1484-1486 1489-1490, 1502-1503 1511, 1513, 1516-1517 1523, 1531	Information from <b>s22</b> and other documents	Exempt in part	s38(1)
30-35, 37, 39-42, 66, 70 175, 247, 352, 420 525, 595, 700	Third party information	Exempt in part	s47F(1)
72-126, 128-130 249-303, 305-307 422-476, 478-480 597-651, 653-655 823-877, 879-881 888-890, 937, 943-981, 987 989, 1003-1008 1135-1141, 1152-1153 1158-1166, 1170-1238 1249-1251, 1253-1258 1342-1344, 1346-1351 1466-1481, 1488 1495-1500, 1505-1509 1518-1522, 1525-1530	Documents	Exempt in full	s38(1)
161-166, 191-194 338-343, 368-371 511-516, 541-544 686-691, 716-719	Third party documents	Exempt in full	s47F(1)

759-762, 769-772 891, 900-904, 908 917-921, 930, 932-936			
223	Document	Exempt in full	s37(1)(b)
1460-1465	Documents	Exempt in full	s47E(d)
All other pages		Released	

- ICSE screenshot of s 22, 1 page, Released in full
- s 22 1 page, Released in full



21 September 2022

s 22

Email: s22

In reply please quote:

s 22

Dear s22

**Freedom of Information request – Revised decision**

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 03 February 2022 seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 05 March 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

### **Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

#### *55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### **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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

### **Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in

#### **Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

*Electronically signed*

Position number: 60016892  
Freedom of Information Section  
Department of Home Affairs  
Email : [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



## Attachment A – DECISION RECORD

### Client Details

s 22

### Documents in scope

1. s 22 – containing 189 pages.
2. ICSE Notes of s 22 - 14 pages
3. s 22 - 1 page
4. s 22 - 4 pages
5. s 22 - 1 page

### Information considered

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. In reaching my decision, I have considered the following:

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

### Reasons for decision

I have considered the documents 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 reasons for exemptions below.

### **22 Access to edited copies with exempt or irrelevant matter deleted (extract)**

#### *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.*

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.

I have considered the files within the scope of your request and my decision is to release, in part, the documents within the scope of your request. I have refused access to s 22 [REDACTED] because it cannot be found or does not exist. I have released the remaining documents within the scope of your request.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

You will see these exemptions in the documents released to you as they will be clearly identified with 's 22 (1)(a)(ii)' however they will not be individually noted in the Schedule of Documents. Please note that there are times that this same section of the FOI Act will be used to remove other material and this will be in the Schedule of Documents with a clear explanation as to what the material is.

Please note that I have deleted other irrelevant material under section 22(1)(a)(ii) of the FOI Act as detailed in the attached Schedule of Documents.

The materials in question relate to third parties. Your request is for information about yourself and you have indicated at questions 12 and 17 of the form 424A that you do not require information about any other person.

I have therefore determined the materials which do not relate to you to be irrelevant to your request and have deleted them under section 22(1)(a)(ii) of the FOI Act.

## **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

### *Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

I have identified the following document/s as coming within the scope of your request.

- s22 [REDACTED]

- s22 [REDACTED]

I have undertaken the following searches to identify the document/s you have requested:

- Searched the following departmental databases:
  - Integrated Client Services Environment (ICSE)
  - ICSE Offspring
  - TRIM – the Department’s record management system

I have been unable to locate any documents within the scope of your request.

As the document does not exist, I am refusing your request for access.

#### **47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department’s operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department’s operations.

On the other hand I considered the following in favour of non-disclosure:

- Could reasonably be expected to impede the administration of migration and citizenship laws, including procedural fairness
- Reveal covert operating procedures, the release of which would require the Department to change the way it operates.

The disclosure of documents exempt under section 47E(d) would reveal various methods used by the Department, giving the applicant prior knowledge of the processes of the Department. This could allow applicants to deliberately circumvent certain departmental processes in the future, thereby prejudicing and compromising the effectiveness of the processes set up for the core operational activity of the Department – processing of visa and citizenship applications. In addition, changing the processes continually would come at a cost to the Department.

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.

Yours sincerely

*Electronically signed*

Nurun

Position No: 60016892

FOI Case Officer, Freedom Of Information (FOI)

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

Date: 21 Sept 2022

## Attachment B - SCHEDULE OF DOCUMENTS



1. **s 22** 189 pages

Page	Description	Decision	Legislation
41	<b>s 22</b>	Irrelevant material deleted	s.22(1)(a)(ii)
104 - 111		Irrelevant material deleted	s.22(1)(a)(ii)

2. ICSE notes of **s 22** - 14 pages

Page	Description	Decision	Legislation
2	<b>s 22</b>	Exempt in part	s.47E(d)
6		Irrelevant material deleted	s.22(1)(a)(ii)

3. **s 22** - 1 page - full released
4. **s 22** - 4 pages - full released
5. **s 22** - 1 page - full released



21 October 2022

Our reference: **s 22**

**s 22**

Only by email: **s 22**

Dear **s 22**

**Freedom of Information Request – Reconsideration of charges**

**Section 55G of the *Freedom of Information Act 1982***

I refer to your request made to Services Australia (agency) on 24 June 2021 for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:



On 8 September 2021, the Agency notified you that you are liable to pay a charge for the processing of your FOI Act request in accordance with s 29 of the FOI Act.

s 22

## Background and original decision

On 13 September 2021, you responded to the Agency's preliminary charge notification, stating s 22

On 11 October 2021, the Agency notified you we had considered your response and determined to reduce the charge payable in relation to your FOI Act request to s 22 (reconsidered charge decision).

On 9 November 2021, you sought internal review of the Agency's reconsidered charge decision.

On 8 December 2021, the Agency affirmed the reconsidered charge decision on internal review, confirming the charge payable in relation to your FOI Act request is s 22

## Application for Information Commissioner Review

On 12 September 2022, the Agency was notified by the Office of the Australian Information Commissioner that you had sought Information Commissioner (IC) review of the Agency's internal review decision in accordance with Part VII of the FOI Act.

In your application for IC review, you requested the charge be waived in full by the Agency s 22

Section 55G of the FOI Act provides that at an agency may vary, or set aside and substitute, an original decision at any time during an IC review if the variation or substitution would have the effect of, among others things, relieving an applicant from liability to pay a charge in relation to a FOI Act request.

I am writing to provide you with a revised decision under s 55G of the FOI Act. This decision has the effect of reconsidering the charge notified to you.

## Revised decision – Section 55G of the FOI Act

I am authorised to make decisions under s 23(1) of the FOI Act.

I have given fresh consideration to the matters raised by you in relation to s 22

In accordance with s 55G of the FOI Act, I have decided to set aside the original decision.

In setting aside the original decision, I have decided to waive the charge notified to you in full.

**Time limit for processing your FOI Act request**

Section 31 of the FOI Act provides that, where a notice is sent to an applicant regarding the payment of a charge in respect of a FOI Act request, the time limit for processing the request is suspended from the date the notice is received until either:

- a) the day following payment of the charge (in full or the required deposit); or
- b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

In light of my decision to waive the charge in relation to your FOI Act request, the Agency is now due to provide a decision to you on your request by **23 October 2022**.

**Further assistance**

If you have any questions, please email: [FOI.LEGAL.TEAM@servicesaustralia.gov.au](mailto:FOI.LEGAL.TEAM@servicesaustralia.gov.au)

Yours sincerely

Spencer  
Authorised FOI Decision Maker  
Freedom of Information Team  
Information Access Branch | Legal Services Division  
Services Australia



Australian Government  
Department of Home Affairs

7 October 2022

s 22

Asylum Seeker Resource Centre  
214-218 Nicholson Street  
FOOTSCRAY VIC 3011

Email: s22

In reply please quote:

s 22

Dear s22

**Access Decision - Revised decision**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 20 May 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 19 June 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:
- (a) giving access to a document in accordance with the request; or
  - (b) relieving the IC review applicant from liability to pay a charge; or
  - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note:* When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
  - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G (1)(a) of the FOI Act as set out below.

### **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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

### **Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in

#### **Attachment A.**

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

### **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 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.

### **Contacting the Department**

You can contact us with an enquiry in a number of ways including by email, through our website; by telephone, through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8:30 am and 4:30 pm Monday to Friday. Details on submitting a webform, or contacting our offices outside Australia are available on our website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).

Yours sincerely

Rubi

Position number 60016889

Freedom of Information Section

Department of Home Affairs

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

### **Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



## Attachment A – Decision Record

### Client Details



### Scope of Request



### Departmental records within scope

No.	Description	Reference	No. of folios
1.	Departmental File <b>s 22</b>	Documents in scope	28

### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above);

### 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 reasons for exemption below.

### Section 22

#### **22 Deletion of exempt matter or irrelevant material**

(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*

(a) *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*
- (b) *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*
- (c) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

A number of documents contain information that is exempt under one or more sections of the FOI Act. I am able to provide you with an edited copy of those documents under section 22(1)(b).

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

The Department stores documents in many formats and the documents you have requested have been stored with other documents of a similar nature that are not part of your request.

I have therefore determined the materials which do not relate to you to be irrelevant to your request and have deleted them under section 22(1)(a)(ii) of the FOI Act.

#### **Section 47E(d)**

##### ***47E Public interest conditional exemptions—certain operations of agencies***

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure. In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;

On the other hand I considered the following in favour of non-disclosure:

- Could reasonably be expected to impede the administration of migration and citizenship laws, including procedural fairness
- Reveal covert operating procedures, the release of which would require the Department to change the way it operates.

The disclosure of documents exempt under section 47E(d) would reveal various methods used by the Department, giving the applicant prior knowledge of the processes of the Department. This could allow applicants to deliberately circumvent certain departmental processes in the future, thereby prejudicing and compromising the effectiveness of the processes set up for the core operational activity of the Department – processing of visa and

citizenship applications. In addition, changing the processes continually would come at a cost to the Department.

On balance, I am satisfied that the release would be contrary to the public interest and the documents are exempt under section 47E(d) of the FOI Act.

### **Section 47F**

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

*(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).*

I have formed the view that the documents are of a kind to which section 47F does apply. Therefore, I am required to consider whether disclosure of the documents would be unreasonable. I took the following information into consideration:

- The information appears on a file that holds your personal information. This weighs in favour of the release being reasonable.
- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.

On balance I believe it would be unreasonable to release these documents.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered the following factors in favour of the disclosure of the documents:

- there is a general public interest in making information held by the Government accessible to the public;

On the other hand, I have considered the following factor against disclosure of the documents:

- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

The information contained within the identified 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.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

Rubi  
Position number 60016889  
Freedom of Information Section  
Department of Home Affairs  
Email : [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

**Attachment B – Schedule of Documents****Client Details**

**s 22**

**Departmental File – s 22**

<b>Page No.</b>	<b>Description</b>	<b>Decision</b>	<b>Legislation</b>
2,4,10,13,17	Incident report	Exempt in part	s.47F(1)
13,17,1	Incident report	Exempt in part	s.47E(d)
19	Security risk assessment	Exempt in part	s.47E(d)
20	Security risk assessment	Exempt in part	S47F(1) s47E(d)
21	Security risk assessment	Exempt in part	S22(i)(a)(ii) s47E(d)
28	Individual management plan	Exempt in part	S47F(1)



**Australian Government**  
**Department of Home Affairs**

21 October 2022

**s 22**  
Refugee Advice and Casework Service  
30 Botany Street  
RANDWICK NSW 2031

**Sent via Email:** xxxxxxxxxxxxxx@xxxx.xxx.au

**In reply please quote:**

**s 22**

Dear **s22**

**Freedom of Information request – Revised decision**

**s22** (the applicant) has authorised you to receive correspondence about their Freedom of Information request on their behalf. Correspondence will not be sent directly to the applicant. In this letter references to 'you' and 'your' relate to the applicant.

This letter refers to your request received on 23 July 2022 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

**s22**

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on [due date] and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refused decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

**Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in **Attachment A**.

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

Angela  
FOI Officer Position No: 00001107  
Freedom of Information Section  
Department of Home Affairs  
Email: [xxx.xxx@xxxxxxxxxxx.xxx.xx](mailto:xxx.xxx@xxxxxxxxxxx.xxx.xx)

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act

**Attachment A – DECISION RECORD****Client Details**

**Documents in scope**

1. Departmental file **s 22** – containing 359 pages.

**Information considered**

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. In reaching my decision, I have considered the following:

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

**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.

**22 Access to edited copies with exempt or irrelevant material deleted**

- (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.*

A number of documents contain information that is exempt under one or more sections of the FOI Act. I am able to provide you with an edited copy of those documents under section 22(1)(b). You can identify those documents in the schedule of documents with the words 'Exempt in part' or 'Refused in part' in the decision column.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

## 7 Exemption of certain persons and bodies

*(2A) An agency is exempt from the operation of this Act in relation to the following documents:*

*(a) a document (an **intelligence agency document**) that has originated with, or has been received from, any of the following:*

- (i) the Australian Secret Intelligence Service;*
- (ii) the Australian Security Intelligence Organisation;*
- (iii) the Inspector-General of Intelligence and Security;*
- (iv) the Office of National Assessments;*
- (v) the Australian Geospatial-Intelligence Organisation;*
- (vi) the Defence Intelligence Organisation;*
- (vii) the Australian Signals Directorate;*

*(b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.*

The documents that I have refused access to under section 7(2A) are documents that have been provided by organisations that are not subject to the requirements of the FOI Act. Section 7 of the FOI Act provides that certain organisations or documents are not subject to the requirements of the FOI Act. This means that you have no legal right to obtain access to the documents originating from those agencies.

## 33 Documents affecting national security, defence or international relations

*A document is an exempt document if disclosure of the document under this Act:*

*(a) would, or could reasonably be expected to, cause damage to:*

- (i) the security of the Commonwealth;*
- (ii) the defence of the Commonwealth; or*
- (iii) the international relations of the Commonwealth; or*

*(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.*

*Note: See also subsection 4(10).*

I have decided that documents that would fall within the scope of this request would be exempt under section 33(a)(i) as they concern the security of the Commonwealth, the disclosure of which could reasonably be expected to cause damage to Australia's security.

In my opinion the expectation of damage to the protection of Australia and its population is a reasonable one, having paid regard to the nature of the information. I am of the view that releasing the material would contribute to a lessening of the value of the information and may reveal methods that are used to gather intelligence information.

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

(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).*

The Department will send emails and create documents containing records of multiple clients where the information is of the same nature. These documents can be placed on individual client files without the information of other clients being removed. This situation has occurred in relation to documents on your file.

Yours sincerely,

Angela  
FOI Officer Position No: 00001107  
Freedom of Information Section  
Department of Home Affairs  
Email: [xxx.xxx@xxxxxxxxxxx.xxx.xx](mailto:xxx.xxx@xxxxxxxxxxx.xxx.xx)

## Attachment B - SCHEDULE OF DOCUMENTS



## 1. Departmental File: s 22 – containing 359 pages

Pages	Description	Decision	Legislation
10,15-22 & 31	departmental file notes	exempt in part	s33(1)(a)(i), s47F(1)
42-43	emails	exempt in full	s7(2A), s33(1)(a)(i)
252-286 & 294	departmental file notes	exempt in part	s33(1)(a)(i), s47F(1)
302	departmental document	exempt in part	s33(1)(a)(i)
314-315	emails	exempt in full	s7(2A), s33(1)(a)(i)
318, 320	emails	exempt in full	s33(1)(a)(i)
	All other pages released in full		



21/10/2022

s 22

Victoria Legal Aid  
GPO Box 4380  
MELBOURNE VIC 3001

Email: migration@vla.vic.gov.au

In reply please quote:

s 22

Dear s22

### Freedom of Information request – Revised decision

If you are nominated to receive correspondence about this Freedom of Information (FOI) request, copies will not be sent to the applicant. In this letter references to 'you' and 'your' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs (the Department) under the *Freedom of Information Act 1982* (the FOI Act) on 20 June 2022 seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 20/07/2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

*(a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*

*(b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refused decision and substitute it with a revised decision under section 55G(1)(a) of the FOI Act as set out below.

**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*;

- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

**Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to refuse in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in **Attachment A**.

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

*Electronically signed*

FOI Officer

Jai

Position no. 60016895

Freedom of Information Section

Department of Home Affairs

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

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act

**Attachment A – DECISION RECORD****Client Details****Documents in scope:****Information considered**

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. In reaching my decision, I have considered the following:

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

**Reasons for decision**

My decision is to release, in part, the documents within the scope of your request. I have refused access to certain documents as they cannot be located or do not exist.

**22 Access to edited copies with exempt or irrelevant matter deleted (extract)***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.*

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

**s 22**

**24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

Section 24A provides that the department may refuse access to a document where that document cannot be found or does not exist. Before coming to a decision that a document cannot be found or does not exist, the department must take all reasonable steps to locate the document

I conducted searches on the following Departmental databases in relation to the above documents:

- Integrated Client Services Environment (ICSE)
- Content Manager – the Department's record management system

I could not locate any of the above documents.

Therefore, I am refusing access to the same under s24A of the FOI Act.

Yours sincerely,

*Electronically signed*

FOI Officer

Jai

Position no. 60016895

Freedom of Information Section

Department of Home Affairs

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

Attachment B - SCHEDULE OF DOCUMENTS

s 22

s 22



18/10/2022

s 22

Email: s22

In reply please quote:

s 22

Dear s22

#### Freedom of Information request – Revised decision

s 22

The Department has interpreted the scope of your request more specifically as:

s22

#### Deemed refused decision

A 'deemed refusal' has occurred as the time for making a decision has expired on 26/06/2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

#### Revocation of deemed refused decision

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

*(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

*(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refused decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

### **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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

### **Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in **Attachment A**.

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

*Electronically signed*

FOI Officer  
Jai  
Position no. 60016895  
Freedom of Information Section  
Department of Home Affairs  
Email : [foi.nsw@homeaffairs.gov.au](mailto:foi.nsw@homeaffairs.gov.au)

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act

**Attachment A – DECISION RECORD****Client Details****Documents in scope:**

- Departmental file s 22
- Case dumps related to file s 22
- Departmental File: s 22
- Electronic document s 22

**Information considered**

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. In reaching my decision, I have considered the following:

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

**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.

**22 Access to edited copies with exempt or irrelevant matter deleted (extract)***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.*

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.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

#### **Deletion of irrelevant material:**

Please note that I have deleted other irrelevant material under section 22(1)(a)(ii) of the FOI Act as detailed in the attached Schedule of Documents.

The materials in question relate to third parties. Your request is for information about yourself and you have indicated at questions 12 and 17 of the form 424A that you do not require information about any other person involved in your application.

I have therefore determined the materials which do not relate to you to be irrelevant to your request and have deleted them under section 22(1)(a)(ii) of the FOI Act.

**Departmental file** s 22

#### **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

##### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

Section 24A provides that the department may refuse access to a document where that document cannot be found or does not exist. Before coming to a decision that a document cannot be found or does not exist, the department must take all reasonable steps to locate the document

s 22

Therefore, I am refusing access to the above file under s24A of the FOI Act.

**33 Documents affecting national security, defence or international relations**

*A document is an exempt document if disclosure of the document under this Act:*

*(a) would, or could reasonably be expected to, cause damage to:*

*(i) the security of the Commonwealth;*

I have decided that documents that would fall within the scope of this request would be exempt under section 33(a)(i) as they concern the security of the Commonwealth, the disclosure of which could reasonably be expected to cause damage to Australia's security.

In my opinion the expectation of damage to the protection of Australia and its population is a reasonable one, having paid regard to the nature of the information. I am of the view that releasing the material would contribute to a lessening of the value of the information and may reveal methods that are used to gather intelligence information.

**47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them.
- The need for openness and accountability of the department's operations.
- The extent to which the information is known by the public.

On the other hand I considered the following in favour of non-disclosure:

- Reveal covert operating procedures, the release of which would require the department to change the way it operates.
- could reasonably be expected to prejudice security, law enforcement, public health or public safety
- Release could prejudice the management function of the department.
- The information is not already known to the public.

Releasing information about the processes, criteria and checks during assessment for Australian citizenship may enable applicants to circumvent certain processes in the future. This would result in the department having to continually change its processes at a cost to the department.

Release would also compromise the capacity of the department to carry out one of its essential management functions, conferral of Australian citizenship.

I have given these factors the most weight. I therefore believe that releasing this information would be contrary to the public interest.

Yours sincerely,

*Electronically signed*

FOI Officer  
Jai  
Position no. 60016895  
Freedom of Information Section  
Department of Home Affairs  
Email : [foi.nsw@homeaffairs.gov.au](mailto:foi.nsw@homeaffairs.gov.au)

## Attachment B - SCHEDULE OF DOCUMENTS



- Departmental file **s 22**, Refused under s24A of the FOI Act.
- Case dumps related to file **s 22**

Pages	Description	Decision	Legislation
1-9, 13-15 17-19, 21-23 25,27-35,39	Third party information	Material irrelevant to your request	s22(1)(a)(ii)
23-25, 37	Case dump	Exempt in part	s33(a)(i)
All other pages		Released	

- Departmental File: **s 22**

Pages	Description	Decision	Legislation
65-69	Third party documents	Material irrelevant to your request	s22(1)(a)(ii)
99-101	Documents	Exempt in full	s47E(d)

- Electronic document **s 22**, 2 pages, released with deletions under s22(1)(a)(ii) of the FOI Act.



26 October 2022

s 22

Sent via post

In reply please quote:

s 22

Dear s22

#### Freedom of Information request – Revised decision

s22 (the applicant) has authorised you to receive correspondence about their Freedom of Information request on their behalf. Correspondence will not be sent directly to the applicant. In this letter references to 'you' and 'your' relate to the applicant.

This letter refers to your request received on 31 March 2022 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

s 22

#### Deemed refused decision

A 'deemed refusal' has occurred as the time for making a decision has expired on [due date] and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

(2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refused decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

**Revised decision**

The Department has identified the documents that fall within the scope of your request. My decision is to exempt in part the documents in the possession of the Department, which

fall within the scope of your request. The reasons for my decision are set out in **Attachment A**.

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

**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 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

Angela  
FOI Officer Position No: 00001107  
Freedom of Information Section  
Department of Home Affairs  
Email: [xxx.xxx@xxxxxxxxxxxxx.xxx.xx](mailto:xxx.xxx@xxxxxxxxxxxxx.xxx.xx)

**Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act

**Attachment A – DECISION RECORD****Client Details****Documents in scope**

1. Departmental file s 22 – containing 197 pages.
2. Departmental file s 22 – containing 316 pages
3. Departmental file s 22 – containing 1364 pages.

**Information considered**

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. In reaching my decision, I have considered the following:

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

**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.

**22 Access to edited copies with exempt or irrelevant material deleted**

- (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.*

A number of documents contain information that is exempt under one or more sections of the FOI Act. I am able to provide you with an edited copy of those documents under section 22(1)(b). You can identify those documents in the schedule of documents with the words 'Exempt in part' or 'Refused in part' in the decision column.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

### **37 Documents affecting enforcement of law and protection of public safety**

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
  - (b) *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
  - (c) *endanger the life or physical safety of any person.*
- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the fair trial of a person or the impartial adjudication of a particular case;*
  - (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
  - (c) *prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*

Section 37(1)(b) provides that a document will be exempt if its disclosure under the FOI Act would disclose or enable a person to ascertain the existence or identity of a confidential source of information or the non-existence of a confidential source of information in relation to the enforcement or administration of the law.

I believe that the release of these documents may disclose the confidential source of the information and that the identity of the confidential source may be ascertainable from the contents of the documents. The information was supplied to the Department on an expectation that the identity of the confider would remain confidential.

The Department has a policy of not disclosing the identity of persons providing information to the Department in the absence of their consent or unless there are compelling reasons for so doing. The Department relies on persons or organisations to supply information to it so that it can enforce migration law. If the Department were to disclose the identity of such suppliers it may discourage individuals from providing such information to the Department in the future and would be detrimental to the Department in enforcing the law.

On that basis I am refusing you access under section 37(1)(b) to the information in the documents.

The information which I have exempted under section 37(2)(b) is information which, if disclosed, would reveal lawful methods or procedures used by the Department to investigate complaints and would be reasonably likely to prejudice the effectiveness of those methods or procedures.

I believe disclosure of this information would reasonably compromise the Department's investigation strategy by revealing the Department's methods of investigating issues and in so doing would compromise the Department's ability to successfully utilise such methods or procedures in the future.

It is important that these processes are kept confidential to prevent persons from circumventing these procedures, or from providing false information during these investigations. Release of this information would prejudice the effectiveness of the referral process, and the attainment of true and correct information.

### **38 Documents to which secrecy provisions of enactments apply**

- (1) *Subject to subsection (1A), a document is an exempt document if:*
- (a) *disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and*
  - (b) *either:*
    - (i) *that provision is specified in Schedule 3; or*
    - (ii) *this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.*
- (1A) *A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.*
- (2) *Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.*
- (3) *This section applies in relation to a document so far as it contains personal information about a person if:*
- (a) *the person requests access to the document; and*
  - (b) *disclosure of the document, or information contained in the document, is prohibited under section 503A of the Migration Act 1958 as affected by section 503D of that Act.*
- (4) *In this section: **enactment** includes a Norfolk Island enactment.*

I have made a decision not to grant access to these documents as I am of the opinion that these documents are exempt documents under section 38 of the FOI Act. The release of the documents is prohibited under section 503A as affected by section 503D of the *Migration Act 1958*.

The information contained within the documents has been communicated to an authorised migration officer by a gazetted agency on condition that it be treated as confidential information and the information is relevant to the exercise of a power under section 501, 501A, 501B or 501C.

#### **42 Documents subject to legal professional privilege**

- (1) *A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*
- (2) *A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.*
- (3) *A document is not an exempt document under subsection (1) by reason only that:*
  - (a) *the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and*
  - (b) *the information is operational information of an agency.*

The documents identified in the schedule of documents as being exempt under section 42(1) of the FOI Act are documents that contain information subject to legal professional privilege.

For a document to be exempt under section 42(1) I must be satisfied that the documents would be privileged from production in legal proceedings on the ground of legal professional privilege and that real harm would result from disclosure of this information.

A document is privileged on the ground of legal professional privilege if, amongst other things, it is a confidential communication between a person and his or her solicitor or barrister brought into existence for the dominant purpose of seeking or giving advice or for the purpose of providing legal services in connection with proceedings.

The documents considered exempt under section 42(1) were raised for the dominant purposes of giving or seeking legal advice, and are confidential communication between departmental legal officers and the client in which information was conveyed or requested for the purpose of legal advice.

I have considered these facts in conjunction with section 42(1) of the FOI Act. The departmental legal adviser in response to a request prepared the documents concerned by the Department for legal advice. The Department, as the client, does not agree to waive its privilege in relation to the document because of the effect this could have on the conduct of its legal affairs.

I am satisfied that at this time the Department has not waived its claim to legal professional privilege in relation to this document and that the document is not solely operational information of the agency.

Consequently, having regard to all of these matters, I have decided to refuse access to the material indicated in the Schedule, in whole, under section 42(1) of the FOI Act.

**47B Public interest conditional exemptions—Commonwealth-State relations etc.**

*A document is conditionally exempt if disclosure of the document under this Act:*

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or*
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or*
- (d) would divulge information or matter communicated in confidence by or on behalf of an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or*
- (f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to an authority of Norfolk Island or to a person receiving the communication on behalf of an authority of Norfolk Island.*

I have decided that the documents identified in the Schedule as exempt under section 47B(a) are documents that would or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

In my opinion the expectation of damage that would be caused is a reasonable one, having paid regard to the nature of the information and the context of the submission in which the information is contained, and the nature and significance of the Commonwealth's relations with its State partners. I am of the view that releasing the material I have exempted under this part would contribute to a lessening of confidence that State governments place on the Commonwealth government, which could reasonably be expected to result in a reduction of the quality and quantity of information provided by States.

Having formed the view that release of the documents would or could reasonably be expected to cause damage to relations between the Commonwealth and a State I then considered whether the release would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department's operations.

On the other hand I considered the following in favour of non-disclosure:

- The need for Commonwealth and State to be able to work closely together to the benefit of the Australian public;
- The Commonwealth's ability to administer its laws without the cooperation of State authorities;

Given the possible effect on the ability of Commonwealth and State to work together, I have given more weight to those factors that favour non-disclosure.

On balance I have decided that the public interest in the non-disclosure of the documents out-weighs the public interest in disclosing the documents, therefore the release would be contrary to the public interest and the documents are exempt under section 47B of the FOI Act.

**47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

For a document to be exempt under section 47E(d), I must be satisfied that there is a reasonable expectation that its disclosure will result in a substantial adverse effect on the Department's operations and that there is no overriding public interest in favour of disclosure.

In my opinion the documents listed in the Schedule as exempt under this section could reasonably be expected, if disclosed, to prejudice the effectiveness of the operations of this Department.

Having formed this view I then considered whether release of the documents would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department's operations.

On the other hand I considered the following in favour of non-disclosure:

- Could reasonably be expected to impede the administration of migration and citizenship laws, including procedural fairness
- Reveal covert operating procedures, the release of which would require the Department to change the way it operates.

The disclosure of documents exempt under section 47E(d) would reveal various methods used by the Department, giving the applicant prior knowledge of the processes of the Department. This could allow applicants to deliberately circumvent certain departmental processes in the future, thereby prejudicing and compromising the effectiveness of the

processes set up for the core operational activity of the Department – processing of visa and citizenship applications. In addition, changing the processes continually would come at a cost to the Department.

On balance, I am satisfied that the release would be contrary to the public interest and the documents are exempt under section 47E(d) of the FOI Act.

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

(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).*

The Department will send emails and create documents containing records of multiple clients where the information is of the same nature. These documents can be placed on individual client files without the information of other clients being removed. This situation has occurred in relation to some documents on your files.

s 22

Therefore, I am required to consider whether disclosure of the documents would be unreasonable. I took the following information into consideration:

- The information appears on a file that holds your personal information. This weighs in favour of the release being reasonable.
- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- The information does not appear to be in the public forum. This weighs against the release being reasonable.

On balance I believe it would be unreasonable to release these documents.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered the following factors in favour of the disclosure of the documents:

- there is a general public interest in making information held by the Government accessible to the public;

On the other hand, I have considered the following factor against disclosure of the documents:

- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

The information contained within the identified 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.

As you have not provided written consent from **s 22** allowing me to release her personal documents to you, I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F of the FOI Act.

#### **47G Public interest conditional exemptions—business**

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
  - (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
  - (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*
- (2) *Subsection (1) does not apply to trade secrets or other information to which section 47 applies.*
- (3) *Subsection (1) does not have effect in relation to a request by a person for access to a document:*
  - (a) *by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
  - (b) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
  - (c) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*
- (1) *A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:*
  - (a) *the Commonwealth or a State; or*
  - (b) *an authority of the Commonwealth or of a State; or*
  - (c) *a Norfolk Island authority; or*
  - (d) *a local government authority.*
- (5) *For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.*

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

The documents that I have identified as being exempt under section 47G(1)(b) contain information that would disclose information concerning an organisation in respect of its lawful business, commercial or financial affairs.

I have decided that the disclosure of this information could reasonably be expected to prejudice the future supply of information to the Department for the purpose of the administration of a law of the Commonwealth. The Department often requests information from businesses and organisations on the understanding that the information will be maintained securely and only used for the purpose for which it was requested. If businesses and organisations cannot believe this, the information will not be provided.

Having formed the view that release of the documents could reasonably be expected to prejudice the future supply of information I then considered whether the release would be contrary to the public interest.

I considered the following factors in favour of disclosure:

- There is a general public interest in making information held by the Government accessible to the public;
- A person or the general public is entitled to have access to documents containing decisions which affect them. Disclosure may reveal the reasons for decision;
- The need for openness and accountability of the Department's operations.
- 

The arguments I have considered in favour of non-disclosure include:

- it is a core Government concern to maintain the integrity of the information it holds including information relating to the business, commercial and financial affairs of an organisation;
- the Department relies on organisations providing documents to verify the validity of an applicant's request for immigration to Australia, releasing such documents may prejudice the future supply of such documents to the Department.

I have given greatest weight to the Department's obligation to maintain the integrity of the information it holds.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47G(1)(b) of the FOI Act.

Yours sincerely,

Angela  
FOI Officer Position No: 00001107  
Freedom of Information Section  
Department of Home Affairs  
Email: xxx.xxx@xxxxxxxxxxx.xxx.xx

## Attachment B - SCHEDULE OF DOCUMENTS



## 1. Departmental File: s 22 – containing 197 pages

Pages	Description	Decision	Legislation
1	Departmental email	Exempt in part	s38(1)
4-5	documents from a gazetted agency	Exempt in full	s38(1)
7-9	email	Exempt in full/part	s38(1) & s47(1)(a)
11-13	departmental email	Exempt in full	s38(1)
14-21	departmental email	exempt in full	s42(1)
23	email	exempt in part	s38(1)
25-26	document from a gazetted agency	Exempt in full	s38(1)
29-31	email	exempt in part	s38(1) & s47(1)(a)
32-46	document from a gazetted agency	Exempt in full	s38(1)
49	departmental email	exempt in part	s47F(1)
51-53	documents	Exempt in full	s37(2)(b)
55-57	Emails	exempt in part/full	s38(1) 7 & s47(1)(b)
58	Email	exempt in part	s38(1)
63	departmental email	exempt in full	s47E(d)
72-77	document from a gazetted agency	Exempt in full	s38(1)
157-165	documents	Exempt in full/part	s37(2)(b) & s38(1)
169	email	exempt in part	s38(1)
171	departmental email	exempt in full	s47E(d)
173-175 & 178 - 179	email	exempt in part	s38(1) & s47E(d)
180-196	document from a gazetted agency	Exempt in full	s38(1)
	All other documents released in full		

## 2. Departmental File: s 22 [REDACTED] – containing 316 pages

Page	Description	Decision	Legislation
14-28	documents from a gazetted agency	Exempt in full	s38(1)
59	email	Exempt in part	s38(1)
67-68	Departmental document	Exempt in full	s47E(d)
77-100	documents from a gazetted agency	Exempt in full	s38(1)
134	Departmental document	Exempt in full	s37(2)(b)
135	email	exempt in part	s38(1)
137-138 & 144- 161	documents from a gazetted agency	Exempt in full	s38(1)
162-163	departmental documents relating to s 22 [REDACTED]	Exempt in full	s47F(1)
166-167	documents from a gazetted agency	Exempt in full	s38(1)
170	departmental document	Exempt in full	s37(1)(b)
174, 180	document from a gazetted agency	Exempt in full	s38(1)
177, 184- 187, 192-194	documents pertaining to s 22 [REDACTED]	Exempt in full	s47F(1)
196-198	Document pertaining to s 22 [REDACTED] and emails	Exempt in part	s38(1) & s47F(1)
200- 203, 204-219	departmental emails	exempt in full	s42(1), s47E(d)
220	email	Exempt in part	s38(1)
225	departmental document	Exempt in part	s47E(d)
227-247 255-258	document from a gazetted agency	Exempt in full	s38(1)
241- 247, 249-252	Departmental emails	Exempt in full	s38(1) & s47E(d)
267-268	email	Exempt in part	s38(1)
252, 308, 311, 314, 315-316	email	Exempt in part	s38(1)
269-272	emails	Exempt in full	s38(1)
275-276	departmental emails	Exempt in full	s47E(d)
278-304	document from a gazetted agency	Exempt in full	s38(1)
308- 309, 311, 314-316	Email	Exempt in full/part	s38(1) & s47E(d)
	All other documents released in full		

## 3. Departmental File: s 22 – containing 1364 pages

Pages	Description	Decision	Legislation
4	departmental document	exempt in full	s47E(d)
30-69	departmental document	exempt in full	s47E(d)
73-83	email	exempt in full/part	s47(1)(b) & s47E(d)
86	email	exempt in part	s38(1)
88-100	document from a gazetted agency	exempt in full	s38(1)
106	email	exempt in part	s38(1)
111-112, 114-136	emails and documents from a gazetted agency	exempt in full/part	s38(1)
138 & 144	email	exempt in part	s38(1)
150	departmental document	exempt in part	s47E(d)
181, 183-222	departmental document	exempt in full/part	s38(1) & s47E(d)
229-234	departmental document	exempt in full	s47E(d)
235-256	emails	exempt in part	s38(1)
260	email	exempt in full	s38(1)
263-268	emails	exempt in part	s38(1) & s47F(1)
269	departmental document	exempt in part	s47E(d)
339-345 & 396-413	document from a gazetted agency	exempt in full	s38(1)
445-448	departmental email	exempt in full	s47E(d)
850-891	emails and gazetted agency documents	exempt in full	s38(1), s47E(d), s47G(1)(b) & s47F(1)
925-930	departmental email	exempt in full	s47E(d)
931-932 & 939	departmental document	exempt in part	s47E(d)
942-943, 953-962	emails	exempt in part	s38(1)
968	email	exempt in full	s38(1)
972-1013	departmental document	exempt in full	s47E(d)
1024-1047	documents from a gazetted agency	exempt in full	s38(1)
1157	departmental document	Exempt in full	s37(2)(b)
1158	email	exempt in part	s38(1)
1160-1161	documents from a gazetted agency	exempt in full	s38(1)
1166-1168	email	exempt in full	s38(1)
1169-1170	email	exempt in part	s38(1)
1172-1187	emails and documents	exempt in full	s42(1). S38(1) &

			s47E(d)
1192	department document	exempt in part	s47E(d)
1194-1206	emails and documents from a gazetted agency	exempt in full/part	s38(1)
1209-1215	documents from a gazetted agency	exempt in full/part	s38(1)
1219-1220	departmental document	exempt in full	s47E(d)
1224-1240	emails and documents from a gazetted agency	exempt in full/part	s38(1)
1244-1248	emails	exempt in part	s38(1)
1250-1259	emails and documents from a gazetted agency	exempt in full/part	s38(1)
1262-1271	emails	exempt in full/part	s38(1)
1276-1277	departmental document	exempt in full	s47E(d)
1286, 1289 & 1292	emails	exempt in part	s38(1)
1295-1299	departmental email and document	exempt in part/full	s47E(d)
1306-1307	departmental email	exempt in full	s47E(d)
1311 & 1314	emails	exempt in part	s38(1)
1317-1319	emails	exempt in part	s38(1) & s47E(d)
1323-1325	emails	exempt in part	s38(1) & s47E(d)
1328-1341	emails	exempt in part	s38(1)
1345-1348	departmental document	exempt in full	s47E(d)
1358-1361	departmental document	exempt in full	s47E(d)
1364	email	exempt in full	s38(1)
	All other documents released in full		



27 October 2022

Email **s22**

In reply please quote:

**s 22**

Dear **s22**

### Freedom of Information request – Revised decision on request

This letter refers to your request received on 12 May 2022, seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

**s 22**

On 7 June 2022 a Departmental Officer made a decision on this request, refusing access to the requested documents.

You have since requested the Information Commissioner to undertake a review of the Department's primary decision.

#### Decision

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner:

#### **55G Procedure in IC review—revocation or variation of access refusal decision**

*(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original** decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised** decision) would have an effect of:*

- (a) giving access to a document in accordance with the request; or*
- (b) relieving the IC review applicant from liability to pay a charge; or*
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

**Note:** *When making the revised decision, a consultation requirement under section 26A*

(documents affecting Commonwealth-State relations etc.), 26AA (documents affecting Norfolk Island intergovernmental relations), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

(a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and  
(b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now made a revised decision under section s55G(1)(a). My decision is to vary the original decision and release documents, which were previously refused.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

### **How to make a complaint about the handling of your 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.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. A complaint form is also available at [www.oaic.gov.au](http://www.oaic.gov.au).

If you are unhappy with the Department's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process which has been outlined in the previous section.

### **Contacting the FOI section**

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

### **Contacting the Department**

You can contact us with a general enquiry in a number of ways including by email, through our website, by telephone through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8.30 am and 4.30 pm Monday to Friday. Details on contacting our offices outside Australia are available on our website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).

Yours sincerely

*Anna*

Position Number: 60100863

FOI Officer | Freedom of Information

Freedom of Information and Records Management Branch

Data Division | Strategy and National Resilience Group

Department of Home Affairs

E: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

**Attachments:**

**Decision Record**

**Documents released:**

1. ICSE Screen Shot – Request ID: **s 22** – 1 folio

**DECISION RECORD****Client Details****Documents in scope**

2. ICSE Screen Shot – Request ID: **s 22** – 1 folio

**Information considered**

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. In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above);
- The Information Commissioner’s guidelines relating to access to documents held by government;
- The terms of your request;
- Your application for review with the Information Commissioner.

**Reasons for decision**

I have considered the files within the scope of your request and released the document in full.

*Anna*

Position Number: 60100863

FOI Officer | Freedom of Information

Freedom of Information and Records Management Branch

Data Division | Strategy and National Resilience Group

Department of Home Affairs

E: [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

27 October 2022



19 October 2022

s 22

Email: s22

In reply please quote:

s 22

Dear s22

**Freedom of Information request – Revised decision**

s22 (the applicant) has authorised you to receive correspondence about their Freedom of Information request on their behalf. Correspondence will not be sent directly to the applicant. In this letter references to 'you' and 'your' relate to the applicant.

This letter refers to your request received on 11 Nov 2021 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents held by the Department of Home Affairs (the Department):

s 22

On 21 December 2021 the scope of your request has been revised as

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on [due date] \_\_\_\_\_ and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note:* When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refused decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;

- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below)

### Revised decision

The Department has identified the documents that fall within the scope of your request.

My decision is to release in full the documents in the possession of the Department, which falls within the scope of your request. A list of the documents is below for your reference.

I have identified an existing FOI request that has undergone assessment and finalisation resulting in documentation previously being released to you.

I am providing administrative access to the previous release rather than the Department making a fresh decision on those documents.

### Documents in scope

1. Departmental Partner file s 22 [REDACTED] – containing 100 pages
2. Departmental Partner file s 22 [REDACTED] – containing 112 pages
3. Departmental Partner file s 22 [REDACTED] – containing 150 pages
4. Screen shot of s 22 [REDACTED] - containing 1 page

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s 22 (1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

### 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 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

Nurun

Position No: 60016892

FOI Case Officer, Freedom Of Information (FOI)

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

Date: 19 October 2022

### Attachments

- Departmental Partner file s 22 [REDACTED] – containing 100 pages
- Departmental Partner file s 22 [REDACTED] – containing 112 pages
- Departmental Partner file s 22 [REDACTED] – containing 150 pages
- Screen shot of s 22 [REDACTED] - containing 1 page



3 May 2022

s 22

Victoria Legal Aid  
GPO Box 4380  
MELBOURNE VIC 3001

Email: migration@vla.vic.gov.au

In reply please quote:

s 22

Dear s22

**Freedom of Information (FOI) request - Revised Decision**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 2 February 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time for making a decision has expired on 4 March 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

*55G Procedure in IC review—revocation or variation of access refusal decision*

- (1) *An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:*
- (a) giving access to a document in accordance with the request; or*
  - (b) relieving the IC review applicant from liability to pay a charge; or*
  - (c) requiring a record of personal information to be amended or annotated in accordance with the application.*

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.*

- (2) *If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):*
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and*
  - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.*

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified below);

**Revised decision**

The Department has identified the documents that fall within the scope of your request.

My decision is to exempt in part the documents in the possession of the Department, which fall within the scope of your request. The reasons for my decision are set out in **Attachment A**.

The Schedule of Documents that falls within the scope of your request is at **Attachment B**. Read together the Decision Record and Schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act

#### **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 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

Lyll  
Position number 1544  
FOI Decision Officer  
Freedom of Information Victoria  
Department of Home Affairs  
Email [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

#### **Attachments**

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Documents released to you under the FOI Act



### Attachment A – Decision Record

#### Client Details

s 22

#### Scope of Request

S 22

#### Departmental records within scope

No.	Description	Reference (if applicable)	No. of folios
1.	Departmental File	s 22	1054
2.	s 22		N/A
3.	s 22		N/A
4.	s 22		N/A
5.	s 22		N/A
6.	s 22		N/A
7.	s 22	s 22	4
8.	s 22		2
9.	MP4 audio file	s 22	N/A

#### 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*;
- the Australian Information Commissioner's FOI guidelines relating to access to documents held by government;
- the terms of your request;
- Departmental documents, (identified above)

**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 reasons for exemption below.

**FREEDOM OF INFORMATION ACT 1982****22 Access to edited copies with exempt or irrelevant matter deleted (extract)***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.*

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 schedule 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.

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s.22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

You will see these exemptions in the documents released to you as they will be clearly identified with 's.22(1)(a)(ii)' however they will not be individually noted in the Schedule of Documents.

**FREEDOM OF INFORMATION ACT 1982****SECTION 37*****Documents affecting enforcement of law and protection of public safety***

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
  - (b) *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
  - (c) *endanger the life or physical safety of any person.*
- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the fair trial of a person or the impartial adjudication of a particular case;*
  - (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
  - (c) *prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*

The information which I have exempted under section 37(2)(b) is information which, if disclosed, would reveal lawful methods or procedures used by the Department to investigate complaints and would be reasonably likely to prejudice the effectiveness of those methods or procedures.

I believe disclosure of this information would reasonably compromise the Department's investigation strategy by revealing the Department's methods of investigating issues and in so doing would compromise the Department's ability to successfully utilise such methods or procedures in the future.

It is important that these processes are kept confidential to prevent persons from circumventing these procedures, or from providing false information during these investigations. Release of this information would prejudice the effectiveness of the referral process, and the attainment of true and correct information.

**FREEDOM OF INFORMATION ACT 1982****SECTION 47F*****Public interest conditional exemptions—personal privacy (extract)******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.*

A document is conditionally exempt under s.47F(1) 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 unless the release would be contrary to the public interest. The FOI Act requires me to firstly consider the conditional exemption and then the Public Interest Test in s.11B.

The documents I am exempting under s.47F(1) are documents relating to 3<sup>rd</sup> parties.

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

The conditional exemption will only apply if I am satisfied that the disclosure would involve 'unreasonable' disclosure of a third party's personal information. The FOI 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). I have considered each of these provisions separately below

*(a) the extent to which the information is well known*

It is unknown whether the personal information identified above of the third-party individuals, also identified above, is well known either to you or generally.

If the information is maintained in accordance with Departmental record keeping procedures and is only accessible to officers with a business need to know, the information may not be well known.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

*(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.*

As above, this information is not well known. Therefore, I consider that this individual is not generally known to be associated with the matters discussed within the document.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

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

As stated above, if the information has been handled appropriately the personal information should not be publically available.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

*(d) any other matters that I consider relevant.*

It is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

In regards to documents relating to 3<sup>rd</sup> parties, I am satisfied that as there was no consent provided and that in light of the above points, it would be unreasonable to release this information to you.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

Having considered each of these provisions I am satisfied that disclosure of the personal information would be an unreasonable disclosure of personal information.

I am satisfied that the information I have identified in the relevant documents, as a third party's personal information, is conditionally exempt under s.47F(1) of the FOI Act.

I must now turn my mind to whether the conditionally exempt information would be contrary to the public interest if released. My consideration of s.11B for this conditional exemption is below.

### **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.*

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditional exempt material would be contrary to the public interest. Section 11B sets out four factors favouring access, these include whether access to the documents would do any of the following:

- (a) promote the objects of this Act*
- (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:

While I am satisfied that release of the document in their entirety would provide you access to your own personal information and thereby promote the objects of the Act, this would also result in the release of third-party information which would be contrary to the objects of the Act. I do not consider that full release of the document would inform debate on a matter of public importance or provide an oversight of public expenditure.

The Australian Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which may be considered, however this is not an exhaustive list

that can be taken into consideration by an agency.

On balance, I have given the greatest weight to the right an individual has to maintain their privacy and that to release this information without their informed and expressed consent may result in a breach of their privacy.

I have also had regard to section 11B(4) which sets out the factors that are irrelevant to the decision making process. 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 conditional exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

Yours sincerely

Lyll  
Position number 1544  
FOI Decision Officer  
Freedom of Information Victoria  
Department of Home Affairs  
Email [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)



## Attachment B – Schedule of Documents

### Client Details

**s 22**

### Departmental File **s 22**

Page No.	Description	Decision	Legislation
1-18	Documents	Released	
19-35	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
36-52	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
53-134	Documents	Released	
135-148	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
149-200	Documents	Released	
201-214	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
215-323	Documents	Released	
324-359	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
360-396	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
397-418	Documents	Released	
419-421	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
422-426	Documents	Released	
427-430	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
431-461	Documents	Released	
462-464	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
465-498	Documents	Released	
499-502	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
503-507	Documents	Released	
508-512	Documents relating to law enforcement methods and procedures	Exempt in full	s.37(2)(b)
513-526	Documents	Released	
527-529	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
530-544	Documents	Released	
545-547	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
548-583	Documents	Released	
584-597	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
598-600	Documents	Released	
601-602	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
603	Documents	Released	
604-605	Documents relating to <b>s22</b>	Exempt in full	s.47F(1)
606-610	Documents	Released	







Australian Government  
Department of Home Affairs

20 October 2022

s 22

Refugee and Immigration Legal Service (RAILS)  
PO Box 5143  
WEST END QLD 4101  
AUSTRALIA

Email: s22

In reply please quote:

s 22

Dear s22

**Access Decision - Freedom of Information (FOI) request – Revised decision**

s22 (the applicant) has authorised you to receive, on their behalf, correspondence about their Freedom of Information (FOI) request. Correspondence will not be sent directly to the applicant. In this letter, references to 'you' relate to the applicant.

This letter refers to an access request received by the Department of Home Affairs ('the Department') under the *Freedom of Information Act 1982* (the FOI Act) on 5 May 2022, seeking access to:

s 22

**Deemed refused decision**

A 'deemed refusal' has occurred as the time of making a decision has expired on 4 June 2022 and you have not been given a notice of decision.

You have made an application for review of the deemed refusal decision with the Office of the Australian Information Commissioner (OAIC). The OAIC has notified the Department that the Information Commissioner will review the deemed refusal decision.

**Revocation of deemed refused decision**

Section 55G of the FOI Act allows for a revocation or variation of access refusal decision during a review by the Information Commissioner (IC):

**55G Procedure in IC review—revocation or variation of access refusal decision**

(1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the **original decision**) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the **revised decision**) would have an effect of:

- (a) giving access to a document in accordance with the request; or
- (b) relieving the IC review applicant from liability to pay a charge; or
- (c) requiring a record of personal information to be amended or annotated in accordance with the application.

*Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply*

(2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):

- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
- (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.

I have now set aside the deemed refusal decision and substitute it with a revised decision under section s55G(1)(a) of the FOI Act as set out below.

**Revised decision**

The Department has identified the documents that fall within the scope of your request.

My decision is to release in full the documents in the possession of the Department, which falls within the scope of your request. A list of the documents is below for your reference.

No.	Description	Reference (if applicable)	No. of folios
1.	<b>s 22</b>	Departmental record	10
2.		Departmental record	16
3.		Departmental record	56
4.		Departmental record	78
5.		Departmental record	5
6.		Departmental record	4
7.		Departmental record	2

In your acknowledgement letter, you were advised of the Department's policy to consider irrelevant to the scope of your request the personal details of staff engaged in some departmental roles. This includes their names, direct email addresses and also the mobile and direct work telephone numbers of these staff. This material has therefore been removed under s.22(1)(a)(ii) of the FOI Act from the documents that form the scope of your request.

You will see these exemptions in the documents released to you as they will be clearly identified with 's.22(1)(a)(ii)'.

**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 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.

### **Contacting the Department**

You can contact us with an enquiry in a number of ways including by email, through our website; by telephone, through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8:30 am and 4:30 pm Monday to Friday. Details on submitting a web form, or contacting our offices outside Australia are available on our website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).

Yours sincerely

Electronically signed

Vesna  
FOI Officer  
Freedom of Information Section  
Department of Home Affairs  
Email [foi.vic@homeaffairs.gov.au](mailto:foi.vic@homeaffairs.gov.au)

### **Attachments**

- Documents released to you under the FOI Act