



3 August 2023

MBV: [foi+request-9971-7a144d78@righttoknow.org.au](mailto:foi+request-9971-7a144d78@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 23/02/01304

File Number: FA23/02/01304

Dear MBV

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

On 21 February 2023, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request.

**1 Scope of request**

You have requested access to the following documents:

*All documents and correspondence relating to the drafting and distribution of the Minister's Media Release 'Australian women and children repatriated from Syrian Camps' (29 October 2022), within date range of 01 September to 31 October 2022. This request includes any drafts of the media release, internal communications, and any communications between the Minister's office and the Department.*

**2 Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

**3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- advice from other Commonwealth Departments.

## **4 Documents in scope of request**

The Department has identified 16 documents as falling within the scope of your request. These documents were in the possession of the Department on 21 February 2023 when your request was received. **Attachment A** is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

## **5 Decision**

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

- Release two documents in full;
- Release 12 documents in part with deletions;
- Exempt two documents in full from disclosure.

## **6 Reasons for Decision**

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

### **6.1 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 20 March 2023, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act. The remainder of the documents have been considered for release to you as they are relevant to your request.

### **6.2 Section 47B of the FOI Act – Commonwealth-State relations**

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (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 communication 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.

The disclosure of parts of documents 7.1 and 8.1 would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

I consider that disclosure of information obtained by the Department from partner agencies would adversely affect the continued level of trust and cooperation between these agencies and would impair or prejudice the flow of information between the Department and its State and Territory partners. I have therefore decided that these parts of the documents are conditionally exempt under section 47B(a) of the FOI Act.

Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.6 below.

### **6.3 Section 47C of the FOI Act – Deliberative Processes**

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose deliberative matter relating to the deliberative processes involved in the functions of the Department. ‘*Deliberative matter*’ includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency.

‘*Deliberative processes*’ generally involves “*the process of weighing up or evaluating competing arguments or considerations*”<sup>1</sup> and the ‘*thinking processes –the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.*’<sup>2</sup>

The parts of the documents marked ‘s47C(1)’ contain advice, opinions and recommendations prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of Department. I am satisfied that this deliberative matter relates to a process that was undertaken within government to consider whether and how to make or implement a decision, revise or prepare a policy, administer or review a program, or some similar activity.<sup>3</sup>

Disclosure of this deliberative information could reasonably be expected to inhibit full and frank advice from the Department to its Minister, and, as a result, full consideration by the Government on any potential future decision making.

Section 47C(2) provides that “deliberative matter” does not include purely factual material. I have had regard to the fact that “purely factual material” does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.<sup>4</sup> A factual summary prepared to aid a complex issue may be classed as purely factual material, but may also be of a character as to disclose a process of section involving opinion, advice or recommendation. As such, a conclusion which involves a deliberative process may well prevent material from being purely factual<sup>5</sup>.

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<sup>1</sup> *Dreyfus and Secretary Attorney-General’s Department (Freedom of information)* [2015] AATA 962 [18]

<sup>2</sup> *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67

<sup>3</sup> *Dreyfus and Secretary Attorney-General’s Department (Freedom of information)* [2015] AATA 962

<sup>4</sup> *Dreyfus and Secretary Attorney-General’s Department (Freedom of information)* [2015] AATA 962 [18]

<sup>5</sup> *Harris v Australian Broadcasting Corporation and Others* (1984) 1 FCR 150

I am further satisfied that the factors set out in subsection (3) do not apply in this instance. I have therefore decided that the information is conditionally exempt under section 47C of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.6 below.

#### **6.4 Section 47E of the FOI Act – Operations of Agencies**

Section 47E(c) 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 management or assessment of personnel by an agency. The Department operates in a position of trust within the border environment and as such the highest standard of conduct must be encouraged and maintained.

At times, the policy space that this Department operates in can be highly controversial and divisive and in some circles, an unpopular aspect of government policy. The Department also operates in a highly sensitive operational environment. As such, affording protection to its staff is a high priority for the Department.

Staff names and direct contact details are not published outside the Department in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

The disclosure of staff names and direct contact details outside the Department could expose those members of staff to unsolicited approaches by individuals with criminal affiliations and may result in serious risks to the security and integrity of the Department's lawful activities. There have also been documented cases of members of staff of the Department being harassed and receiving personal threats to their safety.

I am therefore satisfied that the likelihood of a threat from unknown individuals to members of staff is based not based on intangible or hypothetical threats.

The Department has a primary duty of care to ensure, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). The Department must ensure, as far as is reasonably practicable, that the health and safety of other persons is also not put at risk from work carried out as part of the conduct of the Department.

I am of the view that the disclosure of the names of officers contained within the documents could impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This this would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department.

I have therefore decided that the parts of the documents marked 's47E(c)' are conditionally exempt under section 47E(c) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.6 below.

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I consider that the disclosure of the parts of documents marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Some information marked 's47E(d)' consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage.

The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

I have therefore decided that parts of the documents are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.6 below.

### **6.5 Section 47F of the FOI Act – Personal Privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to the following four factors set out in s.47F(2) of the FOI Act:

- *the extent to which the information is well known;*
- *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

I have considered each of these factors below.

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to documents related to the formulation of a media release rather than information which wholly relates to other individuals. I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have therefore decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.6 below.

#### **6.6 *The public interest – section 11A of the FOI Act***

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A)*
- (b) *inform debate on a matter of public importance*
- (c) *promote effective oversight of public expenditure*
- (d) *allow a person to access his or her own personal information.*

Having regard to the above I am satisfied that:

- Access to the documents would promote the objects of the FOI Act.
- The subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- No insights into public expenditure will be provided through examination of the documents.
- You do not require access to the documents in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the parts of the documents that are conditionally exempt under section 47B(a) of the FOI Act could reasonably be expected to prejudice the Department's ability to obtain confidential information from state government agencies in the future. I consider that this would be contrary to the public interest and that this factor weighs heavily against disclosure.
- Disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of Departments across government to provide full and honest advice to stakeholders.
- Disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice law enforcement functions and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its law enforcement functions is not compromised or prejudiced in any way. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- Disclosure of the operational email addresses which are conditionally exempt under section 47E(d) of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. The Department has established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure of the exempt information.
- Disclosure of the conditionally exempt information under section 47E(c) could reasonably be expected to impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This would have a substantial adverse effect on the management of personnel by the Department. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- Disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. The Department is committed to complying with its obligations under the *Privacy Act 1988*. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government*
- b) *access to the document could result in any person misinterpreting or misunderstanding the document*
- c) *the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made*
- d) *access to the document could result in confusion or unnecessary debate.*

I have considered these factors and find they are not relevant to this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

## **7 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

## **8 Your Review Rights**

### *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/>.

## **9 Making a Complaint**

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.



## 10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).

Yours sincerely

*[Electronically signed]*

**Robert**

**Position No. 60123298**

Authorised Decision Maker

Department of Home Affairs

**ATTACHMENT A**

**SCHEDULE OF DOCUMENTS  
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982**

FOI request: FA 23/02/01304

Document #	Date	Description	Pages	Decision on release	
1	13/10/2022	Correspondence	1	s.47E(c) s.47F(1)	Exempt in Part
2	17/10/2022	Correspondence	4	s.22(1)(a)(ii) s.47F(1) s.47E(d)	Exempt in Part
2.1	3/10/2022	Draft Talking Points	4	s.22(1)(a)(ii)	Exempt in Part
2.2	3/10/2022	Draft Talking Points	6	s.22(1)(a)(ii)	Exempt in Part
2.3	-	-	12	s.47E(d)	Exempt in Full
2.4	-	Draft Media Statement	1		Released in Full
2.5	-	Draft Media Statement	1		Released in Full
3	27/10/2022	Correspondence	5	s.22(1)(a)(ii) s.47E(c) s.47E(d) s.47F(1)	Exempt in Part
3.1	-	-	7	s.47C(1)	Exempt in Full
4	24/10/2022	Correspondence	2	s.22(1)(a)(ii) s.47E(c) s.47E(d) s.47F(1)	Exempt in Part
5	25/10/2022	Correspondence	12	s.22(1)(a)(ii) s.47C(1) s.47E(c) s.47E(d) s.47F(1)	Exempt in Part
6	27/10/2022	Correspondence	2	s.22(1)(a)(ii) s.47E(d) s.47F(1)	Exempt in Part
7	28/10/2022	Correspondence	2	s.22(1)(a)(ii) s.47F(1)	Exempt in Part
7.1	-	Draft Media Statement	1	s.47B(a)	Exempt in Part
8	29/10/2022	Correspondence	1	s.22(1)(a)(ii) s.47E(c) s.47F(1)	Exempt in Part
8.1	29/10/2022	Media Release	1	s.22(1)(a)(ii) s.47B(a) s.47F(1)	Exempt in Part
<b>Total pages</b>			<b>62</b>		