



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
Canberra ACT 2601

17 October 2012

File No: 2012/028963



Dear [REDACTED]

Freedom of Information Request

I refer to your email dated 7 August 2012 in which you requested access to documents held by the Australian Customs and Border Protection Service (Customs and Border Protection) under the *Freedom of Information Act 1982* (the FOI Act).

I am authorised under section 23 the FOI Act to make decisions to release and to refuse access to exempt documents.

Scope of Request

The scope of your request includes:

"any documents or reports or emails about an asylum seeker boat believed to have gone missing while on its way to Australia from Indonesia on June 30, 2012".

Decision on access

Customs and Border Protection has identified 72 documents that fall within the scope of your request. These documents were in the possession of Customs and Border Protection on 7 August 2012 when your FOI request was received.

I make the following decision in relation to the documents in the possession of Customs and Border Protection, which come within the scope of your request:

- Exempt 4 documents in full; and
- Release 67 documents in part with deletions; and
- Release one document in full.

A schedule of these documents is at **Attachment A** for your reference.

Reasons for Decision

The schedule of 72 documents that fall within the scope of your request at Attachment A sets out the decision on access and, where appropriate, refers to various sections of the FOI Act. My reasoning in relation to the application of each section to particular documents is set out below.

I note that certain information in document numbered 51 has been redacted in accordance with subsection 7(2A) of the FOI Act. Customs and Border Protection is exempt from the operation of the FOI Act in relation to this information as it is a document that originated with, or has been received from an intelligence agency or contains a summary of, or an extract or information from, an intelligence agency document.

1 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

I have decided that documents numbered 55, 69 and 72 and parts of documents numbered 13, 27, 45, 64, 66, and 70 are exempt from disclosure under section 33(b) of the FOI Act because their release would divulge information communicated in confidence by or on behalf of a foreign government or an international organization to the Commonwealth of Australia.

I have also decided that documents numbered 55, 69 and 72 and parts of documents numbered 8, 12, 33, 45, 62, 64, 65, 68 and 70 are exempt from disclosure under section 33(a)(iii) of the FOI Act because they contain information that would, or could reasonably be expected to, cause damage to the Commonwealth's international relations. The disclosure of the confidential information may diminish the confidence which a foreign government and an international organisation would have in Australia as a reliable recipient of its confidential information. As a result, that country and agency would be less willing to cooperate with Australian Customs and Border Protection in the future.

2 Section 37 – Documents Affecting Enforcement of Law and Protection of Public Safety

I have decided that parts of documents numbered 7, 16, 25, 26, 31, 40, 43, 47, 48, 50, 51, 52, 53, 57, 61, 62, 64 and 65 are exempt from disclosure under subsection 37(1)(b) of the FOI Act because disclosure would, or could reasonably be expected to disclose or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law.

I have also decided that part of documents numbered 51 and 57 are exempt from disclosure under section 37(2)(b) of the FOI Act because they would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigation, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

The disclosure of the information within these documents would be reasonably likely to prejudice the effectiveness of those methods or procedures, assisting endeavours to evade them and thereby reducing Customs and Border Protection's ability to protect the borders of Australia.

3 Section 47E of the FOI Act – Operations of Agencies

I have decided that document numbered 55 and parts of documents numbered 1, 7, 9, 11, 14, 15, 16, 17, 24, 25, 29, 36, 38, 39, 40, 45, 47-53, 56, 57, 60, 63, 66, 67, 69, 71 and 72 are conditionally exempt under section 47E(d) of the FOI Act because disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Customs and Border Protection, the Department of Immigration and Citizenship and the Australian Federal Police.

As I have decided that parts of documents are conditionally exempt, I am required to consider whether access to those documents would be contrary to the public interest (section 11A of the FOI Act). The relevant public interest considerations are set out below.

4 Section 47F of the FOI Act – Personal Privacy

I have decided that parts of documents numbered 1-53, 55-68, 70 and 71 are conditionally exempt under section 47F of the FOI Act as disclosure of the information would involve an unreasonable disclosure of personal information about a number of individuals. This information includes personal information relating to members of the public including their names, dates of birth and photographs. In addition, these documents also contain information that would reasonably identify an officer of Customs and Border Protection or an officer of another Commonwealth agency who occupy sensitive operational positions, either through names, positions or descriptions of their role or employment circumstance.

As I have decided that parts of documents are conditionally exempt, I am required to consider whether access to those documents would be contrary to the public interest (section 11A of the FOI Act). The relevant public interest considerations are set out below.

5 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 subsection 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 the following factors favour disclosure:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within Customs and Border Protection, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the documents:

- In relation to documents that I have decided are conditionally exempt under section 47E(d) of the FOI Act, I consider:
 - Disclosure of the parts of the documents could reasonably be expected to prejudice law enforcement functions and, as a result, the ability of both Customs and Border Protection and the Australian Federal Police to protect Australia's borders. I consider that this factor weighs heavily against disclosure.
 - I also consider that disclosure of information contained in the documents could reasonably be expected to impede the flow of information to law enforcement and/or regulatory agencies. It would also prejudice agencies ability to obtain confidential information and prejudice those agencies ability to obtain similar information in the future. I consider that this factor weighs heavily against disclosure.
- In relation to documents that I have decided are conditionally exempt under section 47F of the FOI Act, I consider:
 - The disclosure of the personal information of individuals contained in documents could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is Customs and Border Protection's view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.
 - Disclosing the names and contact details of Customs and Border Protection's officers, or an officer of another Commonwealth agency, who occupy sensitive operational positions may invite inappropriate approaches by third parties when the documents are made available to the public. This weighs against disclosure.
- I am satisfied that you do not require access to the document in order to access your own personal information or to contribute to the administration of justice for yourself or another person.

I have also had regard to subsection 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 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 conditionally exempt documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

Legislation

I have attached an extract of the exemption provisions of the FOI Act and the public interest test for your information at **Attachment B**.

Your Review Rights

The FOI Act grants you rights to have my decision reviewed.

Information regarding your review rights is available in the Office of the Australian Information Commissioner's FOI Fact Sheet 12 at **Attachment C** for your reference.

Making a Complaint

At **Attachment D** is FOI fact sheet 13 from the OAIC. This sets out how you may complain to the Australian Information Commissioner if you have concerns about how Customs and Border Protection has handled your request for documents under the FOI Act.

Contact

Should you wish to discuss my decision, please do not hesitate to contact Ms Emily Winch, Customs and Border Protection's FOI Coordinator on 02 6275 5621 or via email at foi@customs.gov.au.



Don Smith
National Manager | Counter People Smuggling Taskforce
Australian Customs and Border Protection

ATTACHMENT A

Schedule of Documents

	Date of document	No. of pages	Description	Decision on release
1.	23 Jul 2012	20	<p>Subject: DIAC enquiries relating to 1 July missing vessel</p> <p>Email from re. DIAC enquiries relating to 1 July missing vessel, containing 3 emails with attachments:</p> <p><u>Email 1 (dated 23/7/12)</u></p> <ul style="list-style-type: none"> • From DIAC to People Smuggling Intelligence re. request received by AMSA re. missing family members and search of DIAC's records • 6 photos <p>Includes Email chain.</p> <p><u>Email 2 (dated 23/7/12)</u></p> <ul style="list-style-type: none"> • From DIAC to People Smuggling Intelligence re. request received by DIAC Sydney Service Centre re. missing family members and search of DIAC's records <p>Includes Email chain.</p> <p><u>Email 3 (dated 23/7/12)</u></p> <ul style="list-style-type: none"> • From DIAC to People Smuggling Intelligence re. request received by DIAC Dubai from Palestinian Human Rights Assoc in Cyprus re. Palestinians formerly in Cyprus believed to have taken a boat to Australia • Letter from Palestinian Human Rights Assoc in Cyprus <p>Includes Email chain.</p>	Release in part s47F
2.	24 Jul 2012	1	<p>Subject: FW: DIAC information re 5 Palestinian PIIs</p> <p>Email to DIAC from People Smuggling Intelligence requesting confirmation that people listed in email had not arrived on any SIEV since 20 June. Includes Email chain.</p>	Release in part s47F
3.	6 Aug 2012	2	<p>Subject: FW: AMSA Website Enquiry: I need help for my brother family</p> <p>Email to DIAC from ACBPS asking DIAC to check names against IMA arrivals after missing person enquiry received on AMSA website. Includes Email chain.</p>	Release in part s47F
4.	6 Aug 2012	3	<p>Subject: FW: Claims of missing Mandeian boat arrivals</p> <p>Email to ACBPS officer from People Smuggling Intelligence re. possible passengers on missing boat, stemming from enquiry received by DIAC from Mandeian community. Includes Email chain.</p>	Release in part s47F

	Date of document	No. of pages	Description	Decision on release
5.	24 Jul 2012	1	Subject: FW: DIAC information re 5 Palestinian PII's Email to DIAC from People Smuggling Intelligence requesting confirmation that DIAC has 12 names (from earlier enquires) in addition to those listed in email (sent earlier that day (24 July re. people who had not arrived on any SIEV since 20 June). Includes Email chain.	Release in part s47F
6.	11 Jul 2012	9	Subject: FW: Family member info on PII's Email to ACBPS officer et al from CNOC re. email forwarded by AMSA re. missing family members, plus attachments – 6 photos. Includes Email chain.	Release in part s47F
7.	24 Jul 2012	3	Subject: FW: Possible missing vessel Email to People Smuggling Intelligence from ACBPS officer forwarding AFP Information Report for information. Includes Email chain.	Release in part s37(1)(b) s47E(d) s47F
8.	26 Jul 2012	4	Subject: Fw: Request - Palestinians Email to AFP officers, CC People Smuggling Intelligence, from DIAC re. UNHCR registration details of missing persons and telephone numbers for two of them. Includes Email chain.	Release in part s33(a)(iii) s47F
9.	25 Jul 2012	5	Subject: FW: TIR - Possible Missing Vessel Email from AFP to People Smuggling Intelligence attaching Tactical Intelligence Report re. possible missing vessel. Includes Email chain.	Release in part s37(1)(b) s47E(d) s47F
10.	Undated	2	Subject: FW: AMSA Website Enquiry: I need help for my brother family Email from ACBPS officer to ACBPS officer forwarding email chain re. enquiry received on AMSA website re. missing family members. Includes Email chain.	Release in part s47F
11.	24 Jul 2012	3	Subject: FW: Possible missing vessel From AFP to ACBPS officer re. email trail re. AFP Information Report (not attached). Includes Email chain.	Release in part s47E(d) s47F
12.	25 Jul 2012	2	Subject: Fw: Request - Palestinians From DIAC to AFP etc al re. UNHCR Indonesia registration details of some missing persons. Includes Email chain.	Release in part s33(a)(iii) s47F
13.	26 Jul 2012	2	Subject: Fw: Request - Palestinians From DIAC to People Smuggling Intelligence re. information received from IOM re. some missing persons. Includes Email chain.	Release in part s33(b) s47F
14.	24 Jul 2012	1	Subject: Information relating to possible missing vessel of 1 July From PS Taskforce officer asking agencies to confirm that they do not have any further information relating to possible missing vessel.	Release in part s47E(d) s47F

	Date of document	No. of pages	Description	Decision on release
15.	24 Jul 2012	1	Subject: Information sharing on possible 1 July missing vessel From PS Taskforce officer seeking confirmation that agencies shared details of enquiries received by Australian agencies re. missing persons with Indonesian counterparts - and copy of AFP Information Report (attached) for DIAC information.	Release in part s47E(d) s47F
16.	20 Jul 2012	2	AFP Information Report	Release in part s37(1)(b) s47E(d) s47F
17.	1 Aug 2012	1	Subject: Missing May 2012 Vessel Query Email from ACNPS officer to AFP and DIAC officers acknowledging receipt of AFP Information Report, asking if names were passed to DIAC and seeking photographs of missing persons.	Release in part s47E(d) s47F
18.	23 Jul 2012	10	Subject: Palestinians - Email 1 of 3 Email from DIAC to People Smuggling Intelligence re. <ul style="list-style-type: none"> Request received by AMSA re. missing family members and search of DIAC's records 6 photos attached Includes Email chain.	Release in part s47F
19.	23 Jul 2012	3	Subject: Palestinians - Email 2 of 3 Email from DIAC to People Smuggling Intelligence re. <ul style="list-style-type: none"> Request received by DIAC Sydney Service Centre re. missing family members and search of DIAC's records Includes Email chain.	Release in part s47F
20.	23 Jul 2012	6	Subject: Palestinians - Email 3 of 3 Email from DIAC to People Smuggling Intelligence re. <ul style="list-style-type: none"> Request received by DIAC Dubai from Palestinian Human Rights Assoc in Cyprus re. Palestinians formerly in Cyprus believed to have taken a boat to Australia Letter from Palestinian Human Rights Assoc in Cyprus Includes Email chain.	Release in part s47F
21.	24 Jul 2012	2	Subject: Palestinians - Email 4 Email from DIAC to People Smuggling Intelligence re. receipt by DIAC of enquiry from Palestinian Delegation in Canberra re. missing Palestinians. Includes Email chain.	Release in part s47F

	Date of document	No. of pages	Description	Decision on release
22.	24 Jul 2012	8	Subject: Palestinians - Email 5 - Fw: 2012/4936 FW: Enquiry on missing Palestinians from Iraq after leaving Indonesia heading to Australia Email from DIAC to People Smuggling Intelligence re. actions in response to enquiry received by AMSA from Palestinian Delegation in Canberra re. missing Palestinians. Includes Email chain.	Release in part s47F
23.	24 Jul 2012	2	Subject: Possible missing venture from Indonesia Email from People Smuggling Intelligence to DIAC re. actions in response to enquiry received by DIAC from Palestinian Delegation in Canberra re. missing Palestinians. Includes Email chain.	Release in part s47F
24.	20 Jul 2012	3	Subject: Possible missing vessel Email from AFP to ACBPS officer requesting that information in AFP Information Report be passed to BPC. Report attached.	Release in part s47E(d) s47F
25.	24 Jul 2012	5	Subject: Possible missing Vessel 1 of 2. Email from AFP to AFP re. telephone and email conversations with informant re. internet blog / conversations re. missing vessel. Includes Email chain.	Release in part s37(1)(b) s47E(d) s47F
26.	24 Jul 2012	1	Subject: Possible missing Vessel 2 of 2 Email from AFP to AFP re. names informant was told were on missing vessel. Includes Email chain.	Release in part s37(1)(b) s47F
27.	26 Jul 2012	1	Subject: Question for IMAs from SAR 2012-4422 Email from PS Taskforce officer to ACBPS officer asking if there was any scope to re-interview Palestinian IMA re. the missing vessel.	Release in part s33(b) s47F
28.	24 Jul 2012	2	Subject: Re: DIAC information re 5 Palestinian PII's Email from DIAC to People Smuggling Intelligence advising DIAC does not have any information to suggest that people listed in earlier email have arrived on any SIEV since 20 June. Includes Email chain.	Release in part s47F
29.	12 Jul 2012	3	Subject: RE: Family member info on PII's Email from ACBPS officer to CNOC asking whether any agency was coordinating the response to request received by AMSA re. missing family members. Includes Email chain.	Release in part s47E(d) s47F
30.	24 Jul 2012	4	Subject: RE: Possible missing venture from Indonesia Email from ACBPS officer to DIAC et al re. appropriate agency to respond to enquiry from Palestinian Delegation in Canberra re. missing Palestinians. Includes Email chain.	Release in part s47F
31.	24 Jul 2012	3	Subject: RE: Possible missing vessel Email from ACBPS officer to AFP advising a brief was sent via classified system. Includes Email chain.	Release in part s37(1)(b) s47F

	Date of document	No. of pages	Description	Decision on release
32.	24 Jul 2012	4	Subject: RE: Possible missing vessel Email from ACBPS officer to AFP acknowledging response to request for informant to provide names of (some) missing persons. Includes Email chain.	Release in part s47F
33.	25 Jul 2012	3	Subject: RE: Request - Palestinians Email from ACBPS officer to ACBPS officer (Jakarta) advising information provided re. UNHCR registration of some missing Palestinians had already been received. Includes Email chain.	Release in part s33(a)(iii) s47F
34.	25 Jul 2012	1	Subject: RE: Request for Ministerial Number Email from Ministerial Liaison Officer to PS Taskforce officer allocating a number to use for ministerial briefing. Includes Email chain.	Release in part s47F
35.	25 Jul 2012	3	Subject: RE: TIR - Possible Missing Vessel Email from AFP to People Smuggling Intelligence Includes Email chain.	Release in part s47F
36.	undated	3	Subject: RE: Family member info on PII's Email from ACBPS officer to ACBPS officer re. request received by AMSA re. missing family members, suggesting if people are found, interviews can be conducted to obtain more details. Includes Email chain.	Release in part s47E(d) s47F
37.	8 Jul 2012	3	Subject: Re: FW: Website Enquiry: Missing relative Electronic Notepad message from ACBPS officer to CNOOC, BPC, DIAC, AFP re. enquiry received on AMSA website re. missing friend. Includes Email chain.	Release in part s47F
38.	25 Jul 2012	3	Subject: Re: Information sharing on possible 1 July missing vessel Email from DIAC to PS Taskforce officer advising names of passengers DIAC was given have been provided to IOM and UNHCR in Indonesia. Includes Email chain.	Release in part s47E(d) s47F
39.	24 Jul 2012	2	Subject: Re: Information relating to possible missing vessel of 1 July Email from DIAC to PS Taskforce officer advising no further information available re. missing vessel. Includes Email chain.	Release in part s47E(d) s47F
40.	24 Jul 2012	3	Subject: RE: Information relating to possible missing vessel of 1 July Email from AFP to PS Taskforce officer advising no further information available re. missing vessel. Includes Email chain.	Release in part s37(1)(b) s47E(d) s47F
41.	24 Jul 2012	3	Subject: RE: Possible missing venture from Indonesia Email from DIAC to People Smuggling Intelligence confirming that DIAC received enquiry from Palestinian Delegation in Canberra re. missing Palestinians. Includes Email chain.	Release in part s47F

	Date of document	No. of pages	Description	Decision on release
42.	Undated	2	Subject: RE: Possible missing vessel Email from ACBPS officer to AFP advising that information report had been passed to BPC. Includes Email chain.	Release in part s47F
43.	24 Jul 2012	5	Subject: RE: Possible missing vessel Email from AFP to ACBPS officer advising that AFP will be in contact if informant obtains names on vessel details. Includes Email chain.	Release in part s37(1)(b) s47F
44.	25 Jul 2012	1	Subject: Request for Ministerial Number Email from PS Taskforce officer to Ministerial Liaison Officer requesting a number to use for ministerial briefing.	Release in part s47F
45.	26 Jul 2012	2	Subject: response to Info sharing with BARSARNAS on 1 July alleged missing vessel Email from ACBPS officer (Jakarta) to People Smuggling Intelligence seeking advice from AFP re. information that may be passed to BASARNAS. Includes Email chain.	Release in part s33(a)(iii) s33(b) s47E(d) s47F
46.	25 Jul 2012	2	Subject: Supplementary information regarding the possibility of a missing venture Email from AFP to People Smuggling Intelligence re. information received. Attachments not attached.	Release in part s47F
47.	25 Jul 2012	4	AFP Tactical Information Report	Release in part s37(1)(b) s47E(d) s47F
48.	27 Jul 2012	2	Subject: AUST-PS-Missing asylum seekers – June 2012 AFP Information Report	Release in part s37(1)(b) s47E(d) s47F
49.	20 Jul 2012	2	Subject: AUST-PS-Possible missing SIEV venture – Indonesia to Australia 29-06-2012 AFP Information Report	Release in part s47E(d) s47F
50.	19 Jul 2012	2	Subject: INDO-PS-Possible missing vessel AFP Information Report	Release in part s37(1)(b) s47E(d) s47F
51.	17 Jul 2012	4	Subject: MIN XXXXXX Alleged missing vessel 1 July 12 (Draft) v1 Draft Ministerial briefing	Release in part s7 s37(1)(b), s37(2)(b) s47E(d) s47F
52.	08/08/2012	6	Subject: Passenger information from missing SIEV that departed Indonesia 28 June 2012	Release in part s37(1)(b) s47E(d) s47F
53.	10 Aug 2012	3	Subject: RE. Missing vessel Email from ACBPS officer to ACBPS officer forwarding document in ACBPS possession prior to 7 August. Attachment: AFP Information Report dated 2 Aug 2012	Release in part s37(1)(b) s47E(d) s47F
54.	26 Jul 2012	2	Subject: Talking Points – Alleged missing vessel 1 July Talking Points	Release in full

	Date of document	No. of pages	Description	Decision on release
55.	07/03/2012	10	List of IMs	Exempt in full s33(a)(iii) s33(b) s47E(d) s47F
56.	20/07/2012	1	File Note	Release in part s47E(d) s47F
57.	20/07/2012	1	File Note	Release in part s37(1)(b), s37(2)(b), s47E(d) s47F
58.	25/07/2012	2	Subject: RE: Request – Palestinians Email from Australian Embassy Jakarta to ACBPS and DIAC officers	Release in part s47F
59.	25/07/2012	2	Subject: FW: Request – Palestinians Email ACBPS officer to AFP forwarding names of passengers.	Release in part s47F
60.	25/07/2012	1	Subject: The possible missing venture in late June 2012. Email to from AFP to ACBPS officer advising the AFP was in receipt of information report.	Exempt in full s47E(d) s47F
61.	25/07/2012	2	Subject: RE: Request - Palestinians Email to from DIAC to ACBPS officer regarding information about passengers.	Release in part s37(1)(b) s47F
62.	25/07/2012	3	Subject: RW: Request - Palestinians Email between ACBPS officers regarding information about passengers.	Release in part s33(a)(iii) s37(1)(b) s47F
63.	25/07/2012	2	Subject: RE: The possible missing venture in late June 2012 Email ACBPS officer to AFP regarding seeking advice about content to be used in corro.	Release in part s47E(d) s47F
64.	25/07/2012	4	Subject: RE: Request – Palestinians Email DIAC cc'ing ACPBS officer regarding information about some passengers.	Release in part s33(a)(iii) s33(b) s37(1)(b) s47F
65.	26/07/2012	3	Subject: RE: Request – Palestinians Email DIAC cc'ing ACBPS officer including contact details for two passengers.	Release in part s33(a)(iii) s37(1)(b) s47F
66.	26/0720/12	2	Subject: RE: Info sharing with BARSARNAS on 1 July alleged missing vessel Email from ACBPS officer to People Smuggling Intelligence regarding content to be included into a MINSUB.	Release in part s33(b) s47E(d) s47F
67.	01/08/2012	1	Subject: Possible missing venture of June/July 2012 Email from ACBPS officer to to AFP Jakarta regarding requesting copy of info they have about missing vessel.	Release in part s47E(d) s47F
68.	09/08/2012	5	Subject: FW: TIR – Possible Missing Vessel Email from AFP to ACBPS officer attaching TIR (attachment 1 (TIR) is duplicate of document numbered 47)	Release in part s33(a)(iii) s47F

	Date of document	No. of pages	Description	Decision on release
69.	09/08/2012	1	Subject: Possible Missing Venture of June 2023 // Corro to BASARNAS and BAKORKALMA	Exempt in full s33(a)(iii), s33(b), s47E(d)
70.	09/08/2012	2	Subject: Re: Possible Missing Venture of June // Corro to BASARNAS and BAKORKAMLA Email between ACBPS officers discussing the MINSUB.	Release in part s33(a)(iii), s33(b), s47F
71.	09/08/2012	1	Subject: FW: Possible missing venture of June/July 2012 Email from ACBPS to AFP discussing progressing the matter.	Release in part s47E(d) s47F
72.	09/08/2012	9	Letter from ACBPS to Head of National Search and Rescue Agency.	Exempt in full s33(a)(iii), s33(b), s47E(d)

ATTACHMENT B

Relevant Legislation

Section 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:
 - ...
 - (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.

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:
 - ...
 - (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
 - ...
- (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; or
 - ...

Section 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:

- ...
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Section 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.

...

11B - Public interest exemptions—factors

- (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 22 - Access to edited copies with exempt or irrelevant matter 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.

...



FOI fact sheet 12

Freedom of information – Your review rights

April 2011

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

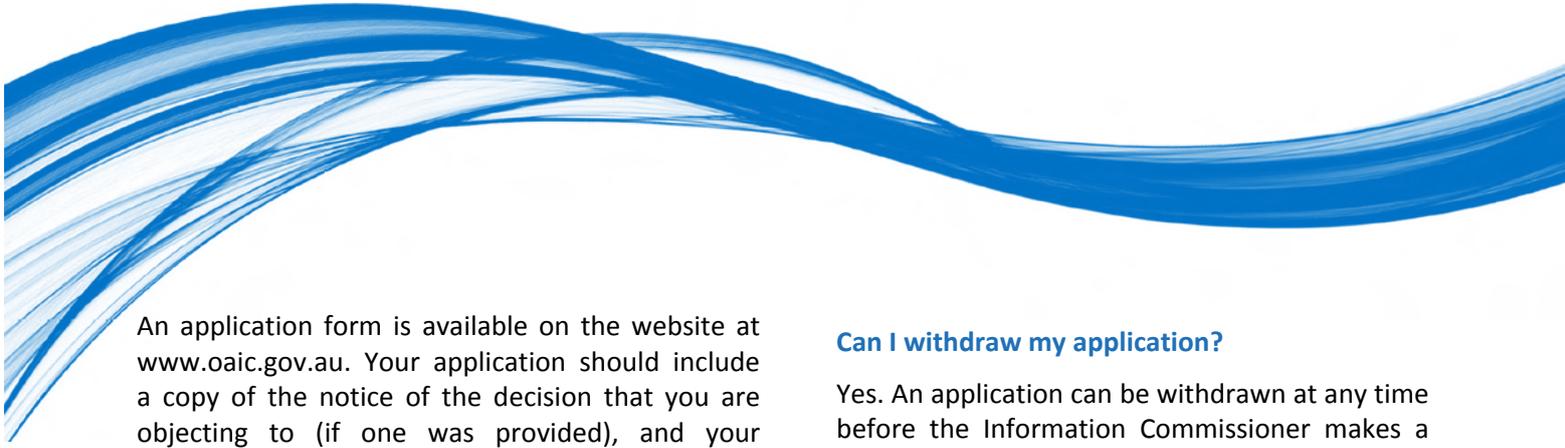
online: www.oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

fax: +61 2 9284 9666

email: enquiries@oaic.gov.au

in person: Level 3,
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. The fee for lodging an AAT application is \$777 (at November 2010), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au



FOI fact sheet 13

Freedom of information – How to make a complaint

October 2010

You may complain to the Australian Information Commissioner if you have concerns about how an Australian Government agency handled a request for documents under the *Freedom of Information Act 1982* (the FOI Act) or took any other action under that Act. If you are unhappy with the agency's decision about giving or refusing access to documents, you should ask for the decision to be reviewed, which is a separate process.

Disagree with an FOI decision?

If you disagree with an agency's or minister's decision on your request under the FOI Act, you have the right to have the decision reviewed. You can ask an agency to review its decision internally. You also have the right to ask the Information Commissioner to review an agency's or minister's decision. See **FOI Fact Sheet 12 Freedom of information – Your review rights** for more information about the review process.

If you are concerned about the way an agency has handled your matter, you can complain to the Information Commissioner.

What are the powers of the Information Commissioner?

The Information Commissioner can investigate a complaint about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The Information Commissioner cannot investigate a complaint about a minister.

In conducting the investigation the Information Commissioner has the power to:

- make inquiries of an agency
- obtain information from any person
- take possession of, or inspect, any relevant documents.

If the Information Commissioner decides to investigate your complaint, the agency you have complained about will be notified in writing of the complaint. The Information Commissioner conducts investigations of complaints in private.

Who can make a complaint?

Any person can make a complaint about the actions of an agency in relation to an FOI activity. You do not need to have requested documents under the FOI Act.

When should I make a complaint?

You can complain to the Information Commissioner at any time. If your complaint relates to an FOI request you can make the complaint at any stage of the process.

Before making a complaint to the Information Commissioner, you should contact the agency directly to try to resolve your concerns. The Information Commissioner may decide not to investigate your complaint if you have not raised your concerns first with the agency or you have not given the agency a reasonable opportunity to deal with your complaint.



How do I make a complaint?

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to us using the details at the end of this fact sheet. A complaint form is also available on our website at www.oaic.gov.au.

If you need help we can assist you. You can contact us on 1300 363 992 or by email to enquiries@oaic.gov.au.

What information do I need to put in the complaint?

To help the Information Commissioner give the best consideration to your complaint, please provide as much relevant information as possible. Be clear about the issues in your complaint and what action or outcome you would like to see as a result.

Is there a fee for making a complaint?

No. There are no costs involved in making a complaint to the Information Commissioner.

What will happen to my complaint?

An officer of the Information Commissioner will contact you to discuss your complaint and you will be kept informed of the progress of your complaint along the way.

Before deciding whether to investigate your complaint the Information Commissioner may make preliminary inquiries of the agency you have complained about.

If the Information Commissioner decides to investigate your complaint, the Commissioner will write to the agency and request information to assist with the investigation.

Can the Information Commissioner decide not to investigate my complaint?

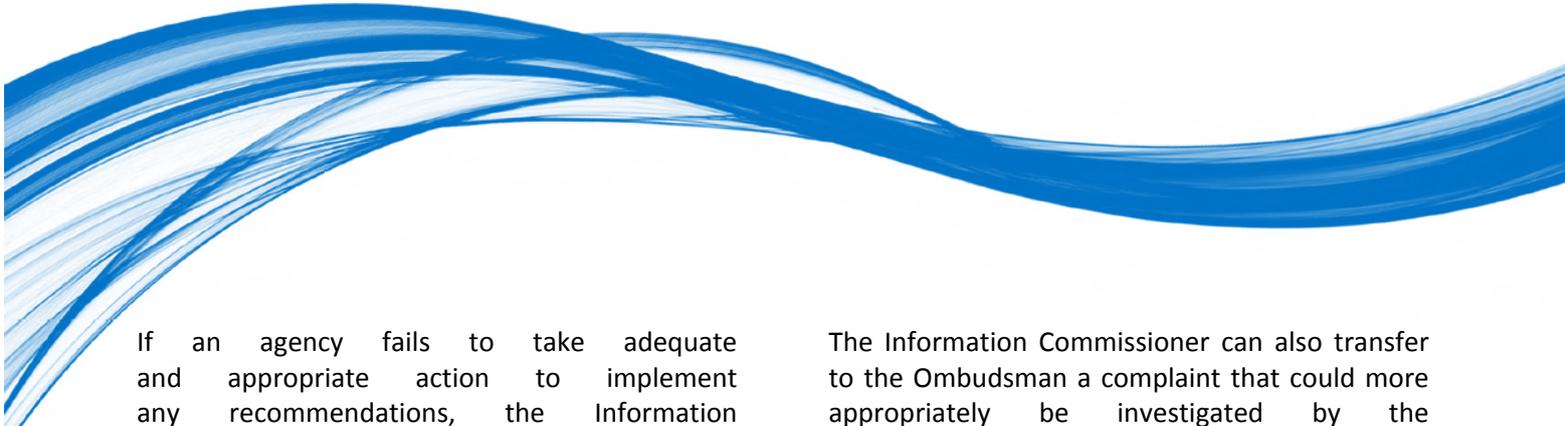
Yes. The Information Commissioner may decide not to investigate, or may discontinue an investigation, if:

- your complaint does not concern an agency's action under the FOI Act
- it is more appropriate for you to complain to another body (such as the agency or the Commonwealth Ombudsman)
- it is more appropriate for you to ask for the decision to be reviewed
- the agency you complained about has dealt with your complaint, or is in the process of dealing with it
- your complaint is frivolous, lacking in substance or not made in good faith
- you do not have sufficient interest in the matter.

If the Information Commissioner decides not to investigate or discontinues an investigation, the Commissioner will notify you and the agency of the reasons for this in writing.

How will my complaint be resolved?

In some cases the Information Commissioner's investigation and intervention may result in the agency addressing the issues that you have complained about. In other cases the Information Commissioner may make suggestions or recommendations that the agency should implement. You and the agency will be notified in writing of the outcome of the investigation.



If an agency fails to take adequate and appropriate action to implement any recommendations, the Information Commissioner may issue a formal implementation notice. This notice requires the agency to explain what action it will take to implement the recommendations. The Information Commissioner may also provide a written report to the minister responsible for the agency, and the report will be tabled in Parliament.

Your name will not be included in the report unless there is a special reason and you were first consulted.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate, the complaint and all relevant documents must be transferred to the Information Commissioner.

The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

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For further information

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