



***'C' and Department of Immigration and Citizenship***  
**[2011] AICmr 7 (22 September 2011)**

Decision and reasons for decision of  
Freedom of Information Commissioner, Dr James Popple

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<b>Applicant:</b>	<b>'C'</b>
<b>Respondent:</b>	<b>Department of Immigration and Citizenship</b>
<b>Decision date:</b>	<b>22 September 2011</b>
<b>Application number:</b>	<b>MR11/00093</b>
<b>Catchwords:</b>	<b>Freedom of Information — Travel and visa information relating to a third party — Whether disclosure of personal information unreasonable — (CTH) <i>Freedom of Information Act 1982 s 47F</i></b> <b>Freedom of Information — Public interest test — Personal information relating to a third party — Whether relationship between applicant and third party relevant — (CTH) <i>Freedom of Information Act 1982 ss 11A(5), 11B</i></b>

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## Summary

1. I affirm the decision of the Department of Immigration and Citizenship (the **Department**) of 8 April 2011 to refuse the applicant access under the *Freedom of Information Act 1982* (the **FOI Act**) to documents relating to a third party.

## Background

2. On 15 December 2010, the applicant applied to the Department for access to 'Details of [a named third party, with a specified date and country of birth]. Dates of arrival, dates of leaving, visas held, duration of validity of visas in 1988 and in period 2000 to 2010 in Australia'.
3. On 14 January 2011, the Department advised the applicant that the documents requested by the applicant were exempt documents under s 47F of the FOI Act. On 10 March 2011, the applicant sought internal review of that decision. The applicant claimed that the information sought was historical, not personal, information and that, if it were personal information, it would not be contrary to the public interest for the applicant to be given access to it.
4. On 8 April 2011 the Department affirmed the original decision on the basis that the information sought was personal information relating to a third party who had not given their consent to its disclosure. In the circumstances, the Department said that the public interest in maintaining privacy rights outweighed any public interest that could be served by releasing the documents.
5. On 20 April 2011, the applicant sought IC review of this decision under s 54L of the FOI Act.

## Decision under review

6. The decision under review is the Department's internal review decision of 8 April 2011 to refuse the applicant's request.

## Personal privacy exemption (s 47F)

7. Section 47F(1) of the FOI Act provides:

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

#### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

8. Section 4 provides that personal information means ‘information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.’
9. The applicant is seeking travel and visa information about a third party. The applicant is not authorised by, or acting on behalf of, that third party in doing so.
10. I do not agree with the applicant that the information in the documents sought is not personal information. It is information recorded in a material form about an individual whose identity is apparent from that information. It is not relevant that the information relates to events in the past, though the age of the information may be relevant to the question whether disclosure would be unreasonable and (if the documents are conditionally exempt) whether access to those documents would be in the public interest.
11. The Australian Information Commissioner has issued Guidelines under s 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. The Guidelines explain that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy.<sup>1</sup> The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not however amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.<sup>2</sup>
12. I think that the disclosure of the personal information in the documents that the applicant seeks would be unreasonable. The information is not already well known, and is not otherwise publicly accessible.<sup>3</sup> There is a general expectation that personal travel and visa information will be treated confidentially.<sup>4</sup> And the personal information sought is not so old that there is no sensitivity attached to its disclosure.
13. The documents the applicant seeks are conditionally exempt under s 47F.

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<sup>1</sup> See *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437.

<sup>2</sup> Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (2010) [6.126].

<sup>3</sup> See *Guidelines* [6.127].

<sup>4</sup> Section 488 of the *Migration Act 1958* makes it an offence to disclose movement records without authority.

## **Public interest test (s 11A(5))**

14. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.
15. Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test.<sup>5</sup> The Guidelines include a non-exhaustive list of further factors that favour access.<sup>6</sup> None of these factors is applicable to this IC review.
16. The relationship, if any, between the applicant and the person whose personal information is sought can be relevant when considering whether access would be contrary to the public interest. For example, an applicant may be seeking personal information about a relative in circumstances where that relative has impliedly authorised them to do so. That would amount to a factor in favour of access.
17. The applicant in this IC review is currently in prison, having been convicted of two counts of soliciting to murder the person whose personal information is in the documents that the applicant is seeking. The applicant's connection to the third party, in this case, amounts to a factor against access.
18. I think that, in the circumstances, giving the applicant access to the documents sought would be contrary to the public interest.
19. The application of the public interest test will always depend on the facts of a particular case. However, if there had been no connection between the applicant and the third party in this IC review, I would have come to the same conclusion about the public interest, given the nature of the documents (containing personal travel and visa information about a third party) and the age of the information.

## **Decision**

20. Under s 55K of the FOI Act, I affirm the Department's decision of 8 April 2011.

James Popple  
Freedom of Information Commissioner  
22 September 2011

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<sup>5</sup> These are whether access to the document would promote the objects of the FOI Act; inform debate on a matter of public importance; promote effective oversight of public expenditure; or allow a person to access his or her own personal information.

<sup>6</sup> *Guidelines* [6.25].

**Review rights**

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is \$777, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website ([www.aat.gov.au](http://www.aat.gov.au)) or by telephoning 1300 366 700.