



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 15/03/00234

File Number ADF2015/8479

#### Scope of request

*2013/2014 contracts, deeds of agreement and confidentiality agreements between DIBP and Channel 7 (or entities related to channel 7) relating to the Border Security television show.*

#### Documents in scope

1. Deed of Agreement between the Department of Immigration and Citizenship and Seven Network – November 2012 – containing 8 folios.

#### Authority to make decision

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

#### Information considered

In reaching my decision, I have considered the following:

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

#### Reasons for decision

I have considered the document within the scope of your request and applied exemptions in part to the document as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

#### *47F Public interest condition 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).*

In my view the folio that is exempt, in part, under section 47F of the FOI Act contain personal information.

Having formed the view that the exempt material is personal information defined by the FOI Act, I am required to consider whether disclosure of the personal information would be unreasonable to release.

The Department has a legal obligation to publish documents released concerning non-personal FOI requests on our disclosure log, which is embodied within our Departmental website.

The Department must balance its responsibilities in maintaining individual's right to privacy and in this specific case, signatures and personal identifiers were required for the purposes of executing the Deed of Variation.

The fact that particular individuals were associated with this matter, attracts a level of personal information and actions taken by individuals in a personal capacity, rather than professional working involvement. Releasing this personal information to the broader public is considered an unreasonable disclosure of personal information.

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 that are in favour of and against disclosure of the information:

Arguments that are in favour of the disclosure of the information include:

- there is a general public interest in making information held by the Government accessible to the public;
- disclosure may reveal the reasons for a decision encompassing a specific degree of public interest; and
- the need for openness and accountability of the department's operations.

Arguments that are against disclosure of the information 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; and
- prejudice the fair treatment of individuals to contact, interfere with or threaten individuals associated with the document.

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. The Department has taken measures to ensure that you receive personal information however, not to the extent that a release would become an unreasonable disclosure of personal information.

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



Authorized decision maker  
Freedom of Information Section  
Department of Immigration and Border Protection  
Email           foi@immi.gov.au

27 July 2015



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 15/03/00234  
File Number ADF2015/8479

**1. Deed of Agreement between the Department of Immigration and Citizenship and Seven Network – November 2012**

<b>Folio</b>	<b>Description</b>	<b>Decision</b>	<b>Legislation</b>
1 – 2		Release in Full	
3 – 4	Information subject to formal consultation review.	Withheld	s.27 consultation
5		Release in Full	
6	Information subject to formal consultation review.	Withheld	s.27 consultation
7		Release in Full	
8	Third party personal information identified.	Exempt in Part	s.47F(1)

## Attachment C – Extract of relevant legislation

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

#### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

#### *Access given to qualified person instead*

- (4) Subsection (5) applies if:
  - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
  - (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

**qualified person** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

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

**DEED OF AGREEMENT**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**

Represented by the Department of Immigration and Citizenship (DIAC)

**AND**

**SEVEN NETWORK (OPERATIONS) LIMITED**

**ABN 65 052 845 262**

**relating to arrangements for the filming of an observational series about the daily operations of Immigration services.**

THIS DEED OF AGREEMENT is made the on .....November 2012

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA** ('the Commonwealth') represented by the Department of Immigration and Citizenship ('DIAC'); and

**SEVEN NETWORK (OPERATIONS) LIMITD** (ABN 65 052 845 262) whose registered office is at 2<sup>nd</sup> Floor, 38-42 Pirrama Road, Pymont NSW 2009 ('Seven').

**RECITALS:**

Whereas;

1. Seven wishes to film stories for episodes of the television program 'Border Security' between 1 July 2013 and 30 June 2014, covering some of the activities performed by DIAC in border processing; and
2. DIAC has agreed to extend certain co-operation to Seven to facilitate this project.

**IT IS AGREED:**

**1. DEFINITIONS**

'Commonwealth' means the Commonwealth of Australia represented by and acting through the Department of Immigration and Citizenship (DIAC). Any reference in the Deed to any permission or approval to be given by the Commonwealth will be taken to require permission or approval by DIAC.

'Intellectual Property' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

'Material' means any material produced by Seven for purposes of the Program including but not limited to documents, information and data stored by any means, written notes stored in any form, video or audio tapes, compact disks or other digital images.

'Program' means the television program entitled 'Border Security' created and filmed by Seven.

## **2. APPROVAL OF PRODUCTION SCHEDULES**

- 2.1 Production schedules will be negotiated with the Commonwealth taking into consideration all operational issues.
- 2.2 Production schedules are to include all detail regarding Seven's access requirements and must be approved by the Commonwealth. Access to DIAC operations will be granted on a case-by-case basis, taking into account operational, security and safety matters as well as relevant legal restrictions.
- 2.3 All production schedules are to be provided to the Commonwealth for approval one week prior to the commencement of filming.
- 2.4 Any changes to the production schedule must be approved by the Commonwealth prior to the commencement of filming.

## **3. PRESENCE OF THE COMMONWEALTH AT FILMING**

- 3.1 The Commonwealth will have representatives present at all times while Seven is filming the Program.
- 3.2 Seven will not film without the permission of the Commonwealth's representatives.
- 3.3 The Commonwealth has the right to stop any filming that, in the Commonwealth's opinion, may compromise the Commonwealth's working practices and/or current investigations, or infringes the law. If filming is stopped due to a current investigation being compromised, the Commonwealth is under no obligation to provide details of the investigation to Seven in order to explain the Commonwealth's position.

## **4. SECURITY CLEARANCE AND CONFIDENTIALITY AGREEMENT**

- 4.1 All Seven employees and contractors involved in the filming of the Program must successfully obtain a security clearance to protected level from DIAC prior to filming commencing.
- 4.2 All Seven employees and contractors involved in the production of the Program must sign a Deed of Confidentiality prior to filming commencing.

Seven acknowledges that it is aware of the effect of the provisions of the *Crimes Act 1914* dealing with the protection of prescribed official information. Seven agrees that it will bring to the attention of all its employees and agents (including subcontractors) involved in the filming and production of the Program the effect of the provisions of the *Crimes Act 1914* dealing with the protection of prescribed official information.



## **5. APPROVAL OF PROGRAM EPISODES**

- 5.1 Seven will provide the Commonwealth with a DVD disk of each completed episode for approval.
- 5.2 The Commonwealth may require the removal of any footage that, in the Commonwealth's opinion, infringes the law or compromises the Commonwealth's working practices and/or current investigations, is defamatory, or may prejudice an issue in pending or existing litigation.
- 5.3 The approval process will be as follows:
- (a) Seven's legal counsel will provide pre-publication advice on the content of the Program;
  - (b) Commonwealth lawyers will view each episode and sign off as required;
  - (c) a conference call will be made regarding any concerns from the Commonwealth;
  - (d) if changes are required, a further DVD disk incorporating those changes will be sent to the Commonwealth for final approval;
  - (e) the Commonwealth will then provide formal written approval to the Series Producer to air the Program.
- 5.4 If approved, such approval must be provided to the Series Producer within 48 hours of receiving the tape or any further changes required must be notified immediately.
- 5.5 Notwithstanding anything else in this Agreement, Seven will not broadcast an episode of the Program without written approval from the Commonwealth's representatives. Written approval can be in the form of a facsimile transmission.

## **6. EDITORIAL CONTROL**

- 6.1 It is acknowledged and agreed that ultimate editorial control of the Program rests with Seven as the holder of a broadcast licence with the Australian Communications and Media Authority.
- 6.2 This editorial control does not limit the Commonwealth's right to require changes to the Program and ultimate right of refusal in accordance with clause 5.

## **7. PRIVACY**

- 7.1 Seven will use reasonable endeavours to obtain signed clearance forms from all persons featured in the Program.

- 7.2 The Commonwealth requires Seven to conceal the identity of any person featured in the Program who has not signed a clearance form to use footage. If these steps are not taken to the Commonwealth's satisfaction it may require the removal of such footage.
- 7.3 Any privacy concerns in relation to people or any other matter in the Program will be discussed by Seven and the Commonwealth on a case-by-case basis and in accordance with the relevant privacy legislation and guidelines, including the 'Federal Privacy Handbook' and the 'Private Sector Privacy Handbook'.

## **8. WRITTEN PERMISSION REQUIRED**

- 8.1 Seven will not include footage from the Program in any other Seven program (other than for publicity and promotion of the Program) without written permission from the Commonwealth.
- 8.2 Seven will not sell, distribute or otherwise disseminate raw vision which does not constitute part of an approved program to any party, inside or outside the network, without written permission from the Commonwealth.
- 8.3 Any footage intended to be used by Seven for promotion of the Program, that does not constitute part of an approved Program, must be approved by the Commonwealth in writing.

## **9. STORAGE AND DESTRUCTION OF MATERIAL**

- 9.1 All Material will be stored securely by Seven.
- 9.2 The relevant Field Producer will be responsible for security of Material whilst on location. Material stored in Seven's offices will be kept in a locked room or cupboard.
- 9.3 Material relating to AFP operations must be stored separately at a higher level of security. As a minimum this must involve storage in a locked container, within a locked room, within a locked Network Seven building. Access to keys to the storage container must be restricted to two members of 'The Border' production staff with a security clearance level as per this agreement.
- 9.4 Seven will destroy any footage if required by the Commonwealth in writing.

## **10. DISCLOSURE OF INFORMATION BY SEVEN**

Seven will not disclose any information it receives from the Commonwealth except to the extent that such disclosure is necessary in producing and broadcasting the Program.

## **11. INTELLECTUAL PROPERTY**

- 11.1 Intellectual Property in the Program vests in Seven immediately upon its creation, except to the extent that the rights are permanent and not capable of being transferred.
- 11.2 Seven grants to the Commonwealth a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right to sub-licence) to use and reproduce vision from camera and the Program following broadcast of the relevant episode for training and promotional purposes at no cost to the Commonwealth.

## **12. INDEMNITY**

- 12.1 Seven indemnifies the Commonwealth, its officers and employees, against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Commonwealth) that the Commonwealth, its officers or employees may sustain or incur as a result of any act or omission (whether negligent or otherwise) of Seven, its employees, agents and contractors in or in connection with (whether directly or indirectly) the production, filming and screening of the Program including any infringement of third party Intellectual Property rights and disclosure of personal information.
- 12.2 Seven agrees:
- (a) to effect and maintain public liability insurance to the value of 10 million dollars; and
  - (b) upon request, to provide proof of insurance acceptable to the Commonwealth.

This clause 12.2 will continue in operation for so long as any obligations remain in connection with the Deed.

## **13. COSTS**

- 13.1 Seven is responsible for all costs in relation to the Program.
- 13.2 Without limiting the generality of clause 13.1, the costs include all costs in connection with Commonwealth representatives at filming, described at clause 3, including:
- (a) any travel costs, including transportation, accommodation and incidental expenses; and
  - (b) where DIAC is unable to provide a Commonwealth officer as the Commonwealth's representative, costs in connection with engaging a contractor to act as the Commonwealth's representative.
- 13.3 Where the Commonwealth is required to be present at filming as described in clause 3 and has made payment for expenses described in clause 13.2, they shall obtain a

reimbursement of expenses from Seven.

**14. COMMONWEALTH PREMISES**

Seven must, when using the Commonwealth's premises or facilities for the purposes of the Program, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities (including the Commonwealth's smoke-free workplace policy) whether specifically drawn to the attention of Seven or as might reasonably be inferred from the circumstances.

**15. ASSISTANCE BY THE COMMONWEALTH**

The Commonwealth may provide assistance to Seven in accessing Commonwealth facilities, staff and operations. The Commonwealth will not be responsible for any costs incurred by Seven associated with the Program.

**16. RELATIONSHIP BETWEEN THE PARTIES**

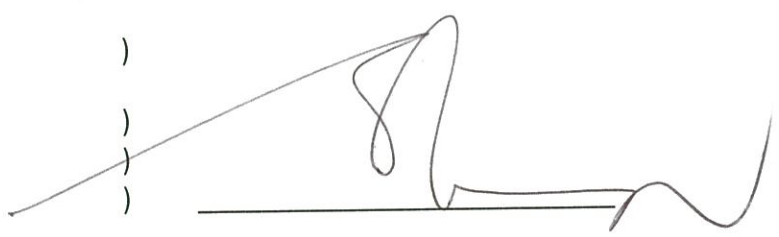
The parties agree that nothing in this Agreement is intended to, nor will it, create:

- (a) a joint venture or partnership between the parties;
- (b) an agency relationship between the parties; or
- (c) any form of binding relationship.

SIGNED AS A DEED on the date first above written

SIGNED SEALED and DELIVERED )

for and on behalf of the )  
COMMONWEALTH OF AUSTRALIA as )  
represented by DIAC )



by SANDI LOGAN

of NATIONAL COMMUNICATIONS MANAGER

in the presence of



Signature of Witness

(print name and address)

NGA VO  
6 CHAN ST  
BELCONNEN ACT 2617

SIGNED SEALED AND DELIVERED

)

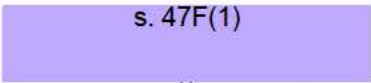
s. 47F(1)

for and on behalf of SEVEN NETWORK  
(OPERATIONS) LIMITED  
(ABN 65 052 845 262)

)

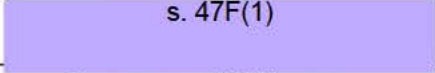
)

)

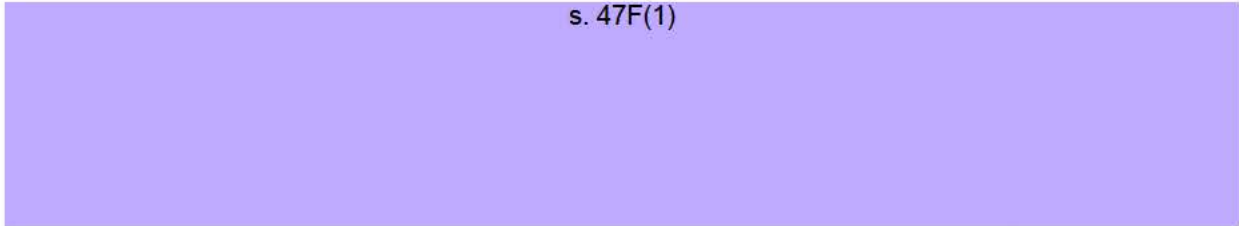
by  s. 47F(1)

of *Seven Productions*

in the presence of

 s. 47F(1)

Signature of Witness  
(print name and address)

 s. 47F(1)