

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X who has remained in restricted immigration detention for more than 36 months (three years).

Name	Mr X
Citizenship	Country A
Year of birth	1970
Ombudsman ID	1002836
Date of DIBP's reports	29 June 2015, 24 December 2015 and 21 June 2016
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

25 June 2013	Detained under s 189(1) of the Migration Act 1958 after living unlawfully in the community. He was transferred to the Villawood Immigration Detention Centre (IDC).
5 April 2014	Transferred to Yongah Hill IDC.
9 October 2015	Transferred to Christmas Island IDC.

Visa applications/case progression

31 July 2009	Arrived in Australia on a Tourist Short Stay visa.
13 May 2010 and 18 May 2010	Mr X was twice granted Bridging visas on departure grounds, with the second one valid until 26 May 2010.
25 June 2013	Mr X was located and detained under s 189(1).
12 July 2013	Lodged a Protection visa application.
11 November 2013	Protection visa application refused.
13 November 2013	Appealed to the Refugee Review Tribunal (RRT).
17 February 2014	RRT affirmed original decision.
March 2014	Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information ¹ .
27 June 2014	DIBP invited Mr X to provide information in relation to the privacy breach.
3 July 2014	Mr X lodged an application with the Federal Circuit Court (FCC) seeking an injunction to prevent his removal from Australia.

¹ In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

14 January 2015	DIBP advised Mr X that it had commenced reassessment of his protection claims as part of an International Treaties Obligations Assessment (ITOA).
20 January 2015	He withdrew his application with the FCC.
25 March 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
27 March 2015	Requested judicial review by the FCC of the ITOA decision.
1 May 2015	He withdrew his application for judicial review.
19 May 2015	Lodged a Bridging visa application which was refused on 20 May 2015.
10 November 2015	Mr X's FCC application regarding the ITOA was relisted.
24 December 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ² which found that the ITOA process was procedurally unfair.
15 March 2016	FCC adjourned proceedings in Mr X's judicial review of ITOA pending determination of the Minister's High Court (HC) appeal.
27 July 2016	The Minister appealed the FFC decision and the HC found that the ITOA process was not procedurally unfair.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has received ongoing monitoring and treatment for a number of physical health issues including a skin condition, chronic knee pain and elbow dysfunction.

In September 2015 Mr X was referred for orthopaedic review in relation to his knee and elbow conditions and is awaiting an appointment. IHMS advised it continues to manage both these conditions with pain relief medication and physiotherapy. IHMS further advised that Mr X had declined anti-inflammatory therapy as recommended by the physiotherapist.

IHMS reported that Mr X has not presented with any chronic or major acute mental health issues.

Other matters

17 June 2016	Mr X lodged a complaint with the Ombudsman's office regarding the loss of personal property during disturbances at Christmas Island IDC in November 2015. The complaint is still under investigation.
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Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.

² SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.