

**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	1974
Ombudsman ID	1002457
Date of DIBP's reports	1 May 2015, 22 October 2015 and 21 April 2016
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

23 April 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
14 April 2014	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point Alternative Place of Detention (APOD).

Visa applications/case progression

10 October 2012	Mr X arrived in Australia on a Tourist visa valid until 10 January 2013.
10 January 2013	Applied for a further Tourist visa and granted an associated Bridging visa.
18 January 2013	Granted a Tourist visa valid until 10 April 2013.
23 April 2013	Located by the Department of Immigration and Border Protection (DIBP) as an unlawful non-citizen and detained.
7 May 2013	Lodged a Protection visa application and associated Bridging visa application.
16 May 2013	Bridging visa application refused.
20 May 2013	Appealed to the Migration Review Tribunal (MRT) for review of the Bridging visa decision.
29 May 2013	MRT affirmed DIBP's Bridging visa decision.
23 July 2013	Protection visa application refused.
29 July 2013	Appealed to the Refugee Review Tribunal (RRT) for review of the Protection visa decision.
25 September 2013	The Minister declined to consider exercising his powers under s 417.
14 October 2013	RRT affirmed DIBP's Protection visa decision.

21 November 2013	Requested judicial review by the Federal Circuit Court (FCC) of the RRT decision.
25 March 2014	The FCC dismissed the application.
14 July 2014	DIBP issued Mr X with a letter inviting him to comment on the unintentional release of personal information ¹ . Mr X submitted his response three days later.
14 January 2015	DIBP commenced an International Treaties Assessment (ITOA) to determine whether the privacy breach in Mr X's case engages Australia's <i>non-refoulement</i> obligations.
23 March 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
26 March 2015	Requested judicial review by the FCC in relation to the ITOA.
22 October 2015	DIBP advised that Mr X's case was affected by the FCC judgment handed down on 2 September 2015 ² which found that the ITOA process was procedurally unfair.
15 January 2016	The FCC adjourned Mr X's case pending determination of the Minister's application to the High Court (HC) for special leave to appeal the FCC's decision on the ITOA process.
21 April 2016	DIBP advised it was making arrangements to recommence consideration of privacy breach related claims separate to the matter being heard by the HC.
27 July 2016	The HC handed down the decision on the Minister's appeal and found that the ITOA process was not procedurally unfair.

Health and welfare

DIBP did not provide an International Health and Medical Services (IHMS) Summary Report covering the first 24 months of Mr X's detention.

IHMS advised that Mr X continued to be treated for hepatitis B and had regular specialist reviews and routine ultrasounds. He had not required treatment for any major mental health issues.

Case status

Mr X was detained on 23 April 2013 after he remained unlawfully in the community following his Tourist visa expiring on 10 April 2013.

He 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.

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.

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