

**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 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1958
Ombudsman ID	1002288-O
Date of DIBP's report	14 January 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

14 January 2014	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 July 2002	Arrived in Australia on an Electronic Travel Authority visa with a fraudulent passport under the name of Country B national Mr Y.
10 October 2002	Mr X remained in the community as an unlawful non-citizen following the expiry of his visa.
14 January 2014	Located by authorities and detained under s 189(1). Mr X disclosed his true identity and provided supporting documentation.
22 January 2014	Lodged a Protection visa application with an associated Bridging visa application.
24 January 2014	Associated Bridging visa application refused.
30 January 2014	Attended an interview in relation to his Protection visa application.
6 February 2014	Protection visa application refused.
13 February 2014	Appealed to the Refugee Review Tribunal (RRT).
12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information. ¹ DIBP advised that Mr X did not raise any further protection claims in relation to the data breach during the appeal process at the RRT.

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.

27 May 2014	RRT affirmed original decision. DIBP advised that following the RRT decision, as Mr X had no matters before DIBP, the courts or tribunals he was scheduled for removal on 18 February 2015.
2 June 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
12 February 2015	Requested judicial review by the Federal Circuit Court (FCC) in relation to the privacy breach and sought an urgent injunction preventing his removal from Australia.
17 February 2015	The FCC granted an interlocutory injunction.
1 May 2015	The FCC refused the request for a final injunction and dismissed his application.
16 May 2015	Requested judicial review by the Federal Court (FC).
14 January 2016	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 International Treaties Obligations Assessment (ITOA) process was procedurally unfair.
21 March 2016	The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.

Health and welfare

International Health and Medical Services (IHMS) reported that Mr X has been treated for a range of physical health issues including shoulder pain and cardiovascular issues which required specialist review. IHMS advised it continues to monitor his condition.

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.

Mr X's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. On 21 March 2016 the Minister filed a notice in the HC to appeal the FFC's decision.

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