

## 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 Ms X who has remained in restricted immigration detention for more than 24 months (two years).

<b>Name</b>	Ms X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1971
<b>Ombudsman ID</b>	1003407
<b>Date of DIBP's report</b>	11 September 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

11 September 2013	Ms X was detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community and transferred to Villawood Immigration Detention Centre.
8 April 2014	Transferred to Wickham Point Alternative Place of Detention.

### Visa applications/case progression

20 April 2013	Arrived in Australia as the holder of a Visitor visa valid until 20 July 2013.
11 October 2013	Lodged a Protection visa application with an associated Bridging visa application.
15 October 2013	Associated Bridging visa application refused.
14 November 2013	Protection visa application refused.
15 November 2013	Appealed to the Refugee Review Tribunal (RRT).
13 January 2014	RRT affirmed original decision.
15 January 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
11 March 2014	Lodged an application for an injunction preventing removal from Australia with the Federal Circuit Court (FCC).
27 June 2014	Ms X was issued with a letter inviting her to comment on the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. <sup>1</sup>
30 June 2014	Ms X provided her response to DIBP.

<sup>1</sup> 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.

1 July 2014	DIBP invited Ms X to provide further information in relation to the privacy breach.
10 July 2014	Ms X provided her response and DIBP advised that it was assessing whether she had raised further protection related claims as a result of the privacy breach.
13 January 2015	Ms X was issued with a letter notifying her of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of her case engage Australia's <i>non-refoulement</i> obligations.
19 January 2015	Ms X withdrew her application for an injunction.
5 February 2015	DIBP invited Ms X to comment on information relating to the ITOA.
11 February 2015	Ms X provided her response to DIBP.
23 March 2015	Found not to be owed protection.
28 March 2015	Requested judicial review of the negative ITOA by the FCC.
12 May 2015	FCC affirmed original decision.
27 May 2015	Appealed to the Full Federal Court (FFC).
2 September 2015	FFC overturned the FCC decision, finding that the ITOA process was procedurally unfair. <sup>2</sup> DIBP advised that it is in the process of seeking legal advice in relation to the judgment.

### Health and welfare

24 October 2013	International Health and Medical Services advised that Ms X presented to a general practitioner (GP) with chest tightness and pain. Tests identified no abnormal results. She reported in a subsequent consultation that this issue was resolved and she attributed the pain to stress.
12 November 2013	Ms X presented to her GP with concerns about physical changes. Scans identified no abnormal results.
3 April 2014	A DIBP Incident Report recorded that Ms X refused food and fluids. No further information was provided.

### Detention incidents

26 April 2014	A DIBP Incident Report recorded that Ms X allegedly assaulted another detainee. The incident was referred to the Northern Territory Police for further investigation. On 29 April 2014 the Northern Territory Police advised it would not be investigating the incident further.
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<sup>2</sup> SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

**Other matters**

11 September 2013	Ms X was located by New South Wales Police in relation to an alleged minor theft. At this time Ms X claimed to be Ms Y. However, the police found her valid Country A passport and she was taken into custody and detained. No further information was provided.
DIBP advised that Ms X is the holder of a Country A passport valid until 2022.	

**Case status**

Ms X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

In reviewing Ms X's case the FFC issued a judgment on 2 September 2015 which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP advised that it is seeking legal advice in relation to the judgment.