

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 remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1963
Ombudsman ID	1003054
Date of DIBP's reports	22 July 2015 and 15 January 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

17 July 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).
March 2016	Mr X was released from detention when he voluntarily departed Australia.

Visa applications/case progression

2 March 2008	Mr X arrived in Australia, with his son, ¹ as the holder of a Student Guardian visa valid until 31 December 2008.
31 December 2008	Mr X's Student Guardian visa ceased. He remained in the community unlawfully.
17 July 2013	He was located working without a valid visa and was detained.
23 July 2013	Lodged a Protection visa application.
25 July 2013	Associated Bridging visa application was refused.
23 September 2013	Protection visa application refused.
24 September 2013	Appealed to the Refugee Review Tribunal (RRT).
4 March 2014	RRT affirmed original decision.
10 April 2014	Signed a request for removal form.
17 April 2014	Withdrew request for removal.
14 July 2014	The Department of Immigration and Border Protection (DIBP) issued Mr X with a letter inviting him to comment on the unintentional release of personal information. ²

¹ DIBP advised that Mr X has a son, Mr Y, who is an Australian citizen. DIBP did not confirm that Mr Y arrived with Mr X in 2008 or is another son.

² 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.

23 July 2014	Mr X provided his response concerning the privacy breach.
9 February 2015	DIBP issued Mr X with a letter notifying him of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
9 April 2015	DIBP finalised the ITOA, determining that Mr X was not owed protection in relation to the privacy breach.
21 April 2015	Mr X requested judicial review by the Federal Circuit Court (FCC).
February 2016	DIBP advised that Mr X's case was affected by the Full Federal Court's (FFC) judgment of 2 September 2015 ³ which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP further advised that it has filed an application in the High Court (HC) for special leave to appeal the FFC's decision but is making the necessary administrative arrangements to recommence consideration of privacy breach-related claims prior to the matter being heard by the HC.
March 2016	Mr X voluntarily departed Australia.

Health and welfare

17 July 2013 – March 2016	International Health and Medical Services (IHMS) advised that Mr X had a history of hepatitis B prior to his arrival in Australia. He required six monthly liver ultrasounds and was monitored by a gastroenterologist and a general practitioner (GP) until his departure from Australia.
26 July 2013 – March 2016	Mr X has a history of severe epigastric pain and was identified as having gastroesophageal reflux disease. He underwent investigations, trialled medications and was monitored by a GP. Despite medication Mr X re-presented to the GP on a number of occasions with persistent pain and he was referred for a specialist review which was attended in December 2015.
27 September 2013 – 15 July 2015	Presented to IHMS with chest tightness and altered cardiac blood test results. He was taken to a hospital emergency department and referred for a heart ultrasound which identified mild abnormalities. His condition was monitored by the GP.
16 July 2015 – 14 December 2015	IHMS advised that Mr X did not present with any cardiac issues.

³ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Information provided by Mr X

During an interview with Ombudsman staff at Villawood IDC on 10 November 2015 Mr X advised DIBP had told him he would not be granted a Bridging visa so he understood he had to remain in detention until his case was resolved.

Mr X said he had ongoing stomach pain and had been waiting for a gastroscopy. He said he had given up pursuing the matter after appointments had been cancelled twice and his case manager had told him he had to wait.

He said he twice attended English classes but found the class was too high level for his needs, but he took part in other activities.

Mr X said he felt under great pressure because of his situation and found it difficult to sleep. He said he had talked to IHMS staff and had initially been prescribed with sleeping medication, but he was no longer receiving medication. Mr X stated a doctor had told him it was normal not to sleep well in the centre.

Case status

Mr X voluntarily departed Australia in March 2016 and returned to Country A.