



**Australian Government**  

---

**Department of Immigration and Border Protection**

## **Attachment A**

### **DECISION RECORD**

#### **Request Details**

FOI Request FA 14/03/00141

File Number ADF2014/7540

#### **Scope of request**

*I'm seeking ministerial briefs or minutes related to female asylum seekers in offshore detention or Australian detention centres under going abortions in 2013 or 2014.*

#### **Documents in scope**

1. Electronic document: Talking Points – containing 2 folios.
2. Electronic document: Talking Points – containing 1 folio.

#### **Authority to make decision**

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents or to amend or annotate departmental records.

#### **Information considered**

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982* (the Act);
- Departmental documents (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government;
- The Department's FOI handbook.

#### **Reasons for decision**

I have considered the files within the scope of your request and applied exemptions in part to the documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

#### **Conditionally exempt documents**

The Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary to the public interest'.

## ***The public interest test***

### Factors weighing in favour of release

In weighing up the public interest test, subsection 11B(3) of the Act states that a decision maker must consider whether disclosure of the information would:

- (a) promote the objects of the Act; or*
- (b) inform debate on a matter of public importance; or*
- (c) promote effective oversight of public expenditure; or*
- (d) allow a person to access his or her personal information.*

The objects of the Act, set out in subsection 3(1) are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities

### Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the Act states that, if the Australian Information Commissioner (AIC) has issued Guidelines that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (subsection 11B(5) of the Act refers).

The AIC has since issued Guidelines that contain a non-exhaustive list of factors that a decision maker must consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the Guidelines refers).

The elements that weigh against disclosure are:

*Whether disclosure of the personal information could reasonably be expected to:*

- (a) prejudice the protection of an individual's right to privacy, including where:*
  - i. the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
  - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) prejudice security, law enforcement, public health or public safety*
- (d) impede the administration of justice generally, including procedural fairness*
- (e) impede the administration of justice for an individual*

- (f) *impede the protection of the environment*
- (g) *impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) *prejudice an agency's ability to obtain confidential information*
- (i) *prejudice an agency's ability to obtain similar information in the future*
- (j) *prejudice the competitive commercial activities of an agency*
- (k) *harm the interests of an individual or group of individuals*
- (l) *prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) *prejudice the management function of an agency*
- (n) *prejudice the effectiveness of testing or auditing procedures*

### **Application of conditional exemptions to your request**

#### ***Public interest conditional exemptions – subsection 47F(1)—personal privacy***

A document is 'conditionally exempt' under subsection 47F(1) of the Act if its release would 'involve the unreasonable disclosure of personal information about any person (including a deceased person)'. A conditionally exempt document **must** be released under the Act unless the release would be 'contrary to the public interest'. The Act requires me to undertake a 2 step process in deciding if an exemption applies.

#### Would the disclosure be an 'unreasonable' disclosure of personal information?

The exemption in subsection 47F(1) of the Act will only apply if I am satisfied that the disclosure would involve 'unreasonable' disclosure of a third party's personal information. The Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I 'must' have regard to the factors set out in subsection 47F(2) of the Act:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly available resources;
- (d) any other matters that I consider relevant.

I have considered each of these elements separately below.

#### *(a) Extent to which the information is known*

Although quite a bit of information on the individuals and the abortion is already in the public domain (due to numerous media reports and interview(s) with the parties concerned), specifics relating to the parties identities, dates and the abortion itself is not. This weighs in favour of the disclosure being an 'unreasonable' disclosure of personal info.

On balance, I believe that this factor weighs in favour of the disclosure being unreasonable.

*(b) Whether the person to whom the information relates is known to be associated with the matters in the document*

It is publically known who the individuals concerned are and that they decided on an abortion. They are accordingly known to be associated with the matters in the document. This weighs in favour of the disclosure not being an 'unreasonable' disclosure of personal information.

On balance, I believe that this factor weighs in favour of the disclosure being reasonable.

*(c) The availability of the information from publicly available sources*

Although some of the details relating to the individuals concerned is already in the public domain and available from public sources, other personal information is not. This weighs in favour of the disclosure being an 'unreasonable' disclosure of personal information.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

*(d) Any other matters that the agency considers relevant*

The information is not your personal information. This weighs against the release being reasonable.

Every person has the right to expect that their personal information will be securely maintained by the department. This weighs against the release being reasonable.

No purpose would be achieved by releasing the third party personal information. This weighs against the release being reasonable.

The current relevance of the information; this weighs against the release being reasonable.

On balance, I believe that the factors weigh in favour of the disclosure being unreasonable.

After considering each element in subsection 47F(2) of the Act, I am satisfied that disclosure of the personal information would be an 'unreasonable' disclosure of personal information.

Therefore, I am satisfied that the information I have identified in the relevant documents is 'conditionally exempt' under subsection 47F(1) of the Act.

Is the release contrary to the public interest?

As a result, I must now consider the factors set out in the public interest test in subsection 11B(3) of the Act, as listed above.

*Factors favouring disclosure*

I have considered the factors set out in subsection 11B(3) of the Act.

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

*Factors weighing against disclosure*

As discussed above, the AIC has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under subsection 11B(5) of the Act.


I consider that the following factors are relevant to the documents in question:

The disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy.

It is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

On balance, I am satisfied that the disclosure of the information I have identified as 'personal information' would amount to an 'unreasonable disclosure of personal information'. Further, I am satisfied that the release of the personal information in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the personal information in the documents is exempt from release under subsection 47F(1) of the Act.

Having reached that view, subsection 22(2) of the Act requires me to provide you with an edited copy of the documents, with the exempt information deleted under paragraph 22(1)(b) of the Act.

  
Marianne Nolte-Crimp  
Authorised FOI Decision Maker  
FOI & Privacy Policy Section  
Ministerial, Executive & External Accountability Branch  
Department of Immigration and Border Protection  
Phone: (02) 6264 1757  
Email: [foi@immi.gov.au](mailto:foi@immi.gov.au)

9 April 2014



**Australian Government**  
**Department of Immigration and Border Protection**

**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 14/03/00141  
File Number ADF2014/7540

**1. Departmental File: Talking Points**

<b>Folio</b>	<b>Description</b>	<b>Decision</b>	<b>Legislation</b>
1-2	Talking Points: Nauru Abortion Claims, dated 25 February 2014	Exempt in part	s.47F(1)

**2. Departmental File: Talking Points**

<b>Folio</b>	<b>Description</b>	<b>Decision</b>	<b>Legislation</b>
1	Talking Points in response to media enquiry relating to transferee on Nauru having an abortion in Brisbane	Exempt in part	s.47F(1)

## Attachment C

### Relevant excerpts of FOI Act

#### Section 22 Access to edited copies with exempt or irrelevant matter deleted

##### Scope

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11 A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

##### Access to edited copy

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

##### Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter--that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.



## **Section 47F Public interest conditional exemptions--personal privacy**

### **General rule**

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.
- (2) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

### **Access given to qualified person instead**

- (4) Subsection (5) applies if:
  - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
  - (a) carries on the same occupation, of a kind mentioned in the definition of *qualified person* in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.



(7) In this section:

*"qualified person"* means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

IMMI 4105

IMMIGRATION

25/02/2014

## NAURU ABORTION CLAIMS

**KEY FACTS/KEY FIGURES**

- Ms Salima <sup>s. 47F(1)</sup>, aged <sup>s. 47F(1)</sup> and her husband MAMUN, Motiur Rahman <sup>s. 47F(1)</sup> were direct boat arrivals to Christmas Island on <sup>s. 47F(1)</sup>. They were transferred to Nauru on <sup>s. 47F(1)</sup>.
- Separate air-conditioned accommodation for mothers and babies is provided at the Nauru OPC, including adequate privacy and wash areas that are specifically for bathing babies.
- Essential items for the care and welfare of infants have been procured and delivered. Items include appropriate equipment for children including prams, capsules, dummies, infant clothing, bedding, consumables, medical equipment and age-appropriate recreational items.
- Mothers breastfeeding will have access to food and water at all times at OPC3.
- Save the Children Australia will provide maternal health nurses to support new mothers and their babies.
- Specialist maternity related IHMS staff at the OPC include a dedicated midwife, two general nurses with midwifery qualifications, a paediatric nurse and a medical officer and senior medical officer both with paediatric emergency experience.
- Primary care for pregnant women and children is provided by International Health and Medical Services (IHMS) medical professionals with support from the Republic of Nauru (RON) Hospital.
- IHMS delivers onsite emergency, primary and mental health care to transferees. These services are provided by IHMS general practitioners, nurses, paramedics, psychologists, counsellors and a full time psychiatrist. IHMS staffing levels are adjusted to be appropriate for the number of transferees.
- Pregnancies are assessed on a case-by-case basis and a care plan is designed by IHMS staff in consultation with the RON hospital.
- The RON hospital has two delivery beds, six postnatal beds and a special care baby unit with a neonatal incubator, infant warmer, oxygen, standard neonatal resuscitation equipment and nasogastric feeding capability.
- The hospital has capacity to perform caesarean sections and other surgical interventions and has pain relief options. The hospital has ten midwives who are supported by a Senior Medical Officer. A General Paediatrician also supports neo-natal care.
- The department is progressing work to ensure services for pregnant women to deliver on Nauru are put in place, including the establishment of a small blood bank and procuring an anatomical ultrasound machine to conduct morphological scans at Nauru OPC.
- Services and equipment required to support transferees giving birth on island is expected to be available by the end of March 2014.

Released by DIBP under the  
Freedom of Information Act 1982

IMMI 4105

IMMIGRATION

25/02/2014

## NAURU ABORTION CLAIMS

### Talking Points

- IHMS is required to deliver health care to transferees that are the best available in the circumstances and broadly comparable with health services available within the Australian community.
- Pregnant transferees are moved to Australia to give birth and are cared for in line with Australian community standards. Once clinically assessed as fit to travel, and appropriate services are in place, transferees and their babies are transferred back to Nauru.
- It would be inappropriate for my department to disclose any further details.

### Background and chronology

- s. 47F(1) Ms Salima indicated her intention to terminate her pregnancy, s. 47F(1)  
s. 47F(1) A referral was made by a General Practitioner of the department's contracted Health Services Provider, International Health and Medical Services (IHMS) s. 47F(1)
- s. 47F(1)
- s. 47F(1)
- IHMS stated they have documented all interactions and counselling stages with this transferee s. 47F(1)  
s. 47F(1)
- Ms Salima's termination could not legally take place in Nauru, and therefore IHMS arranged for the termination to occur in Australia.
- Ms Salima and her husband were transferred from Nauru to Brisbane s. 47F(1)  
s. 47F(1)
- s. 47F(1)

Contact: Simon Schiwy  
Division: Offshore Detention and Returns Task Group  
Date first prepared: 25/02/2014  
Originating Source: DIBP

Phone: 02 6264 3090 s. 47F(1)  
Action Officer: Hayley Abbott  
Date last Updated: 25/02/2014  
Version: 1

Released by DIBP under the  
Freedom of Information Act 1982

## Talking Points in response to a media enquiry relating to a transferee on Nauru having an abortion in Brisbane.

- While the *Privacy Act 1988* prevents the Department of Immigration and Border Protection from commenting on an individual's specific details, the department can advise that all transferees, including pregnant women and children, at the Nauru OPC are receiving appropriate healthcare.
- Health care is provided by IHMS medical professionals with support from the Republic of Nauru (RON) Hospital. Primary health care for pregnant women is assessed on a case by case basis and a care plan is developed appropriately. At present, all pregnant women are transferred to Australia for delivery and will be returned to the OPC at a clinically appropriate time.

### Background

- An enquiry was sent to the Department of Immigration and Border Protection on 24 January 2014 by <sup>s. 47F(1)</sup> [REDACTED] (ABC) regarding transferee abortions due to the conditions on Nauru.
- The enquiry came about after Nauruan transferees stated that they decided to have an abortion because the conditions on Nauru are poor and that they felt the baby would die if it was raised in detention on Nauru.
- These questions were raised:
  - What assistance did the Australian government give to facilitate the above-mentioned abortion? Were other agencies involved?
  - Where was it carried out? What kind of procedure was it?
  - What counselling was given to the couple by the Australian government or any other agency to the couple?
  - What follow-up care will be given to the couple?
  - What protocols are in place for detainees on Nauru when they are pregnant? (For example, are they given special accommodation, do they have to wait in line for food? Etc)
  - What protocols are in place for detainees wishing to seek an abortion?
  - How many abortions have the Australian government facilitated for detainees?

Cleared: Simon Schiwy, Assistant Secretary, Offshore Detention Services