



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request: FA 15/07/01871  
File Number: ADF2015/40246

#### Scope of request

1. On 27 July 2015 you requested:

*documents and correspondence about the removal of three Australian expat detention centre workers from Manus Island following allegations of a gang rape of a local woman on the island.*

*I'm also seeking incident reports and briefs about the alleged gang rape including documents and correspondence from service providers Transfield Services and Wilson Security.*

2. On 24 August 2015 you agreed to the following revised scope:

*I'm seeking documents and correspondence about the removal of three Australian expat detention centre workers from Manus Island following allegations of a gang rape of a local woman on the island (These three men being 'Wilson Security guards accused of rape in a mid- July incident')*

*Timeframe: 1 July 2015 to 27 July 2015*

*I'm also seeking incident reports and briefs about the alleged gang rape including back and forth email correspondence between the Department and Wilson Security and the Department and Transfield about:*

- *Alleged incident;*
- *Decision to remove three staffers from Manus Island.*

#### Documents in scope

3. Four documents have been identified as being within scope of your request. These are detailed at Attachment B – Schedule of Documents.

### **Authority to make decision**

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

### **Information considered**

5. In reaching my decision, I have considered the following:
- The *Freedom of Information Act 1982*;
  - The Departmental documents identified above;
  - Responses to consultation with Broadspectrum (formerly Transfield); and
  - The Australian Information Commissioner's guidelines relating to access to documents held by government.

### **Reasons for decision**

6. Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.
7. This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).
8. Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

### **Exemptions applied to the document under s.22(1)(a)(i)**

9. The Schedule of Documents (Attachment B) and the Documents Released (Attachment D) detail the exemptions that have been applied. Exemptions were applied on the following grounds:

### **Section 33 - Documents affecting national security, defence and international relations**

10. I have decided that parts of the document are exempt under s.33(a)(iii) of the FOI Act, as disclosure of this information would, or could reasonably be expected to, cause damage to Australia's international relations.
11. The information exempted comprises:
- details of investigations into the alleged sexual assault of a Papua New Guinea (PNG) national; and
  - correspondence with an official of the PNG Government regarding the investigation, including comment by the PNG Government official regarding the impact of the incident on the Manus community.
12. Given the sensitivity and confidential nature of the material, I am satisfied that the information is exempt from release under s.33(a)(iii) of the FOI Act, as such release could reasonably be expected to cause damage to Australia's relationship with PNG.

### **Section 47F - Personal privacy**

13. Section 47F(1) of the Act provides:

*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).*

*The relevant documents contain 'personal information'*

14. I am satisfied that the documents to which you have sought access contain 'personal information', being details of the alleged incident which identify the individuals involved and their behaviour in relation to the incident.

*Disclosure would involve the 'unreasonable disclosure of personal information'*

15. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.

16. These factors are:

- 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; and
- d) any other matters that the agency or Minister considers relevant.

17. The personal information in the documents is not well known and has not been officially released into the public domain by the Department, the relevant Service Providers or the PNG Government.

18. I note that the alleged victim provided her account of what occurred to a media organisation, which published the account. This information was not disclosed by the Department and is not representative of the full range of information held by the Department.

19. As such, I consider that disclosure of the personal information in the documents would be unreasonable.

### **Application of the 'public interest' test**

20. While I have found that the conditional exemption in section 47F(1) of the FOI Act applies to the information outlined above, section 11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.

21. In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which point in favour of release. These factors are:


- a) whether release would promote the objects of the FOI Act;
- b) whether release would inform debate on a matter of public importance;
- c) whether release would promote effective oversight of public expenditure; and
- d) whether release would allow a person to access his or her own personal information.

22. I acknowledge that release of the personal information would promote the objects of facilitating and promoting public access to information, and informing debate on a matter of some public interest.
23. I do not consider that release of the personal information would promote effective oversight of public expenditure or allow a person to access his or her own personal information.
24. I consider that the protection of the individual's right to privacy should be given the utmost importance.
25. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the document is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under section 47F of the FOI Act. The exemptions have therefore been applied to the documents released.

**Deletion of irrelevant material under s.22(1)(a)(ii)**

26. The material deleted under section 22(1)(a)(ii) includes:

- any information not relevant to the scope of your request;
- the names and direct contact details of Departmental and contracted service provider staff (although the names of Departmental senior executive service staff have been retained); and
- any information relating to the forwarding or printing of documents, where such action was taken by the Department for the purpose of processing this FOI request.



Authorised decision maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

27 May 2016



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

**FOI Request FA 15/07/01871**

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	18/07/2015	1-2	Email	Exempted in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F(1)
2.	20/07/2015	3-62	Email and attachments	Exempted in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F(1)
3.	20/07/2015	63-66	Email	Exempted in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F(1)
4.	27/07/2015	67-68	Email (DIBP brief)	Exempted in part	s.22(1)(a)(ii)





## Attachment C – Extract of relevant legislation (FOI Act)

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

#### *Exemptions and conditional exemptions*

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## **11B Public interest exemptions—factors**

### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

### *Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## **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 11A (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 33**

### **Documents affecting national security, defence or international relations**

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or



- (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

#### **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.
- (3) 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).