



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/09/02857
File Number ADF2016/56135

Scope of request

1. On 22 September 2016 you requested:

"Under the Freedom of Information Act, I request access to the entire email thread referenced in the ANAO's recent report into DIBP procurement for offshore detention, from Transfield to the then-secretary of the department on August 24, 2012.

<<https://www.anao.gov.au/work/performance-audit/offshore-processing-centres-auru-and-papua-new-guinea-procurement>> (mentioned at 2.20-2.25)

I request the entire email thread, as well as any emails sent or received both internally and externally related to this email from the time in question (i.e. exclude references to this email thread in the ANAO's development of the report)."

2. On 28 October 2016 the Department consulted with a third party in relation to documents concerning their business affairs.

Documents in scope

3. Three documents have been identified as being within scope of your request. The documents 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 terms of your request;
 - the *Freedom of Information Act 1982*;
 - the Australian Information Commissioner's guidelines relating to access to documents held by government;
 - Departmental documents, identified in the Schedule of Documents;
 - consultations with relevant third parties; and
 - consultations with relevant business area/s.

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.
9. I have considered the files within the scope of your request and applied exemptions in part to documents **one** and **two**, as detailed in the Schedule of Documents.
10. I have decided to release document three in full with no exemptions applied. In accordance with Commonwealth Procurement Rules, the same information was provided to all potential tenderers.

Exemptions applied to the documents

11. Exemptions were applied to the documents on the following grounds:

47F(1) – Personal privacy

12. 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'

13. I am satisfied that the documents to which you have sought access contain 'personal information', being personal identifiers and the private details of persons employed by Broadspectrum Limited, formerly known as Transfield Services.

Disclosure would involve the 'unreasonable disclosure of personal information'

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

15. 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.

16. Broadspectrum Limited have requested the Department apply privacy exemptions to the name of the Transfield employee who was the author of document **one**, as the person's name was not disclosed publicly nor published in the Australian National Audit Office (ANAO) report.
17. I have considered Broadspectrum's request, and have examined document **one** in conjunction with the ANAO report titled: '*Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*' published on 13 September 2016 and agree that the identity of the Broadpectrum (Transfield) employee is not disclosed in the ANAO report.
18. In addition, the Broadspectrum employee was not known to be (or to have been) associated with the matters dealt with in documents **one** or **two** and the information contained in these documents is not available from publicly accessible sources.
19. As such, I consider that disclosure of the personal information in the documents would be unreasonable. It is therefore conditionally exempt from release, subject to a public interest test.

Application of the 'public interest' test

20. While I have found that the conditional exemption in s.47F(1) of the FOI Act applies to the information outlined above, s.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 document without the exemptions made under s.47F(1) would promote the objects of the FOI Act, through facilitating and promoting public access to information.
23. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.
24. In contrast, I consider that the protection of the individuals' 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 exempted in part under s.47F(1) of the FOI Act.

Deletion of irrelevant material

26. The material deleted under section 22(1)(a)(ii) as irrelevant material includes any information not relevant to the scope of your request, being:

- 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, if applicable); 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
16 November 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 16/09/02857

No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	24 August 2012	1	Email – Nauru	Released in part	s.47F(1)
2.	31 August 2012	2	Email – Offshore service delivery	Released with irrelevant information deleted	s.22(1)(a)(ii)
				Released in part	s.47F(1)
3.	N/A	3-6	Nauru and Manus Island Detention Centre Service Delivery	Release in full	N/A

Attachment C – Extract of relevant legislation

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

- (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.

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.