



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/10/01759
File Number ADF2016/61833

Scope of request

1. On 20 October 2016 you requested:

All reports, documents and analysis generated by the review team that relate to the 2000 incident reports from Nauru published by the Guardian in August 2016.

Documents in scope

2. The Department has located 24 documents with attachments within the scope of your request. These documents are detailed at **Attachment B – Schedule of Documents**.

Authority to make decision

3. 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

4. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - Consultations with relevant Departmental business areas; and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Decision

5. I have decided to:
 - refuse access to the missing documents; and
 - exempt in part the located documents.

Refusal of access to missing documents – s.24A(1)

6. The Department has been unable to locate the following documents:
 - covering email to Document 19 (report) showing the distribution of the report outside of the review taskforce;
 - covering email to Document 22 (report) showing the distribution of the report outside of the review taskforce; and
 - covering email to Document 23 (report) showing the distribution of the report outside of the review taskforce.
7. The Department has undertaken the following steps to locate these documents:
 - searched Departmental TRIM files; and
 - undertaken searches of the email archives of relevant officers who would have been included in such distributions.
8. These efforts have failed to locate the missing documents. I therefore refuse access to the missing documents on the basis that all reasonable steps have been taken to find the documents and they cannot be found (s.24A(1)).

Exemptions applied

Section 33(a)(iii) – International relations of the Commonwealth

9. The Australian Information Commissioner's Guidelines state:

5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

5.37 The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

5.38 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future. On the other hand, the disclosure of ordinary business communications between health regulatory agencies revealing no more than the fact of consultation will not, of itself, destroy trust and confidence between agencies.

10. I consider that release of parts of Documents 3, 4, 13, 14 and 24 would, or could reasonably be expected to, damage the Department's working relationship with the Government of Nauru. The relevant business area of the Department supports this assessment.

11. The relevant parts of the documents contain details of Departmental discussions with the Government of Nauru, as well as actual or planned engagement with the Government of Nauru on sensitive operational matters.
12. Release of this information would inhibit the Department's ability to obtain updates on sensitive matters from the Government of Nauru and would also negatively impact the trust placed in the Department's officials by the Government of Nauru, in relation to communications about sensitive operational matters.
13. Accordingly, I have exempted the relevant documents in part under s33(a)(iii) of the FOI Act.

Section 47E(d) – Have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

14. Section 47E(d) provides that a document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
15. The parts of Documents 14, 16 and 17 conditionally exempted under s.47E(d) contain sensitive operational information regarding:
 - Departmental discussions with the AFP regarding analysis of the incidents;
 - the development of systems to assist with the recording and analysis of incidents;
 - practical issues around the management of data on Nauru; and
 - methods for keeping informed of any additional releases of the leaked data into the public domain.
16. This information is operationally sensitive as it contains certain details of the Department's operations in relation to the taskforce review which if released, would adversely impact the Department's ability to:
 - seek the views of law enforcement agencies on operational matters;
 - develop systems or methods to record/analyse data including the release of data into the public domain; and
 - manage the storage and handling of data on Nauru.
17. I find these adverse effects to be serious. Therefore, I am satisfied that the material in issue is conditionally exempt under s.47E(d) of the FOI Act.

Section 47F(1) – Personal privacy

18. 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).

19. I am satisfied that Documents 1.1 and 1.2 (which have been exempted in full) and Document 2 (which has been exempted in part), contain 'personal information', being detailed incident reports which are heavily infused with transferee and service provider personal information (identifiers, actions and dates).

Disclosure would involve the 'unreasonable disclosure of personal information'

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

21. I consider that the personal information in the documents is not publically available noting that:

- the incident reports may not be the same ones as those accessed by the Guardian Australia; and
- Guardian Australia de-identified the incident reports it received/placed on its website.

22. I therefore consider that disclosure of the personal information in the documents would be unreasonable and I find the material to be conditionally exempt under s.47F(1) of the FOI Act.

Section 47G(1)(a) – Business

23. A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

24. I am satisfied that parts of Documents 5 and 6 contain information which is sensitive commercial information and should therefore be exempt from disclosure under 47G.

25. The information is the cost of KPMG's contract for providing various services in relation to the taskforce review. The documents detail the number of staff to be provided by KPMG and the duration of its contract for the task. Release of this information would reveal the fee structure charged by KPMG, which could damage KPMG's competitiveness in the market when quoting for such work in the future.

26. The material is therefore conditionally exempt under s.47G(1)(a) of the FOI Act.

Application of the public interest test


27. While I have found that the conditional exemptions in s.47E(d), s.47F(1) and s.47G(1)(a) of the FOI Act apply 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.

28. In determining whether disclosure would be contrary to the public interest, s.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.
29. I acknowledge that release of the documents without the conditional exemptions would promote the objects of the FOI Act, through facilitating and promoting public access to information.
30. Release of the information would make a negligible further contribution to public debate.
31. I do not consider that release of the conditionally exempted information would promote effective oversight of public expenditure, nor would it allow a person to access his or her own information.
32. Contrary to any factors favouring release of the exempted material, I note the following factors against release in this case:
- release would adversely impact the Department's operations;
 - release would compromise the privacy of transferees and service provider staff; and
 - release would unreasonably affect the commercial affairs of a business that was contracted by the Department during the review.
33. Taking into account the above matters, on balance, I consider that disclosure of the information in the documents exempted under s.47E(d), s.47F(1) and s.47G(1)(a) of the FOI Act to be contrary to the public interest. Accordingly, I have applied these exemptions to the documents.

Deletion of irrelevant material

34. The material deleted under section 22(1)(a)(ii) includes:
- the names of non-senior executive staff and all staff direct contact details. Staff position titles and the names of senior executive staff have been retained. The Department's intention to delete this material as irrelevant was advised to you in the FOI request acknowledgment letter of 24 October 2016 and you have not advised the Department that you require this information; 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
 9 May 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/10/01759
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No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	12/08/2016	1-3	Internal email	Irrelevant material deleted	s.22(1)(a)(ii)
1.1 & 1.2	12/08/2016	(72 pages – not included)	2 attachments to Document 1 – detailed incident lists and summaries, including personal information	Exempt in full	s.47F(1)
2.	13/08/2016	4-9	Internal email plus attachment	Exempt in part Irrelevant material deleted	s.47F(1) s.22(1)(a)(ii)
3.	15/08/2016	10-20	Submission to the Minister IBP with Departmental Liaison Officer note affixed	Exempt in part Irrelevant material deleted	s.33(a)(iii) s.22(1)(a)(ii)
4.	18/08/2016	21-28	Internal email plus attachments	Exempt in part Irrelevant material deleted	s.33(a)(iii) s.22(1)(a)(ii)
5.	18/08/2016	29-36	Internal email plus attachments	Exempt in part Irrelevant material deleted	s.47G(1)(a) s.22(1)(a)(ii)
6.	19/08/2016	37-52	Internal email plus attachments	Exempt in part Irrelevant material deleted	s.47G(1)(a) s.22(1)(a)(ii)
7.	20/08/2016	53-61	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
8.	22/08/2016	62-66	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
9.	23/08/2016	67-69	Internal email plus attachment	Irrelevant material deleted	s.22(1)(a)(ii)

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
10.	24/08/2016	70-81	Submission to the Minister IBP	Irrelevant material deleted	s.22(1)(a)(ii)
11.	25/08/2016	82-90	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
12.	25/08/2016	91-95	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
13.	26/08/2016	96-98	Internal email plus attachment	Exempt in part Irrelevant material deleted	s.33(a)(iii) s.22(1)(a)(ii)
14.	29/08/2016	99-105	Internal email plus attachments	Exempt in part Irrelevant material deleted	s.33(a)(iii) s.47E(d) s.22(1)(a)(ii)
15.	30/08/2016	106-108	Internal email plus attachment	Irrelevant material deleted	s.22(1)(a)(ii)
16.	31/08/2016	109-115	Internal email plus attachments	Exempt in part Irrelevant material deleted	s.47E(d) s.22(1)(a)(ii)
17.	01/09/2016	116-122	Internal email plus attachments	Exempt in part Irrelevant material deleted	s.47E(d) s.22(1)(a)(ii)
18.	02/09/2016	123-129	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
19.	07/09/2016	130-131	Internal document Covering email showing distribution of the document outside of the review team unable to be located	Irrelevant material deleted Refused in part	s.22(1)(a)(ii) s.24A(1)
20.	08/09/2016	132-137	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
21.	12/09/2016	138-144	Internal email plus attachments	Irrelevant material deleted	s.22(1)(a)(ii)
22.	13/09/2016	145-150	Internal document plus attachment Covering email showing distribution of the document outside of the review team unable to be located	Irrelevant material deleted Refused in part	s.22(1)(a)(ii) s.24A(1)

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
23.	14/09/2016	151-157	Internal document plus attachment Covering email showing distribution of the document outside of the review team unable to be located	Irrelevant material deleted	s.22(1)(a)(ii)
				Refused in part	s.24A(1)
24.	19/09/2016	158-163	Internal email plus attachment	Exempt in part	s.33(a)(iii)
				Irrelevant material deleted	s.22(1)(a)(ii)