



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/01/00360
File Number ADF2017/4253

Original scope of request

1. On 31 December 2016 you made an FOI request for:

copies of all documents, briefs and correspondence in relation to the cases of Reza Barati and Faysal Ahmed including but not limited to those sent to and from Immigration Minister Peter Dutton and/or his office.

2. Following the Department's provision of a notice under s.24AB of the FOI Act (practical refusal reason), you proposed revision of the scope to the following:

Copies of all documents, briefs and correspondence in relation to the cases of Reza Barati and Faysal Ahmed sent to and from Immigration Minister Peter Dutton and/or his office.

3. The Department accepted the revised scope on 6 March 2017.

Documents in scope

4. The Department identified 24 documents within the scope of your request. These documents are detailed in **Attachment B** - Schedule of Documents and attached as **Attachment C** – Documents released.

Authority to make decision

5. 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

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

Decision

7. I have decided to release the documents with exemptions applied in part.

Reasons for decision

8. 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.
9. 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).
10. 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

11. The exemptions are detailed in the Schedule of Documents and the Documents released. Exemptions were applied on the following grounds:

Section 33(a)(iii) – Documents affecting international relations

12. 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.

13. The relevant business areas within the Department has advised that release of parts of Documents 1, 3, 4, 5, 6, 7 and 8 would, or could reasonably be expected to, damage the Department's working relationship with the Government of Papua New Guinea.
14. The relevant parts of the documents contain details drawn from information exchanges directly between the PNG Government authorities and the Department regarding the investigation into the death of Reza Barati and the associated prosecutions.
15. Release of this information would inhibit the Department's ability to obtain updates on sensitive matters from the PNG Government and would also negatively impact the trust placed in the Department's officials by the PNG Government.
16. Accordingly, I have exempted the relevant documents in part under s33(a)(iii) of the FOI Act.

Section 47F – personal privacy

17. 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).

18. I am satisfied that Documents 3, 5 and 15-24, to which you have sought access, contain 'personal information', being:
 - identities of journalists seeking information from the Department about the deaths;
 - information about witnesses or potential witnesses in relation to the death of Reza Barati, including their movements and their willingness to give evidence;
 - details of communication with Mr Faysal Ahmed's family after his death; and
 - details of Mr Faysal Ahmed's health history, service requests and complaints made while he was at the Manus RPC.

Disclosure would involve the 'unreasonable disclosure of personal information'

19. 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.
20. I consider that the personal information in the documents is not known to the applicant or available in the public domain in the detail contained within the documents. I also note that Mr Faysal Ahmed's death is currently subject to a coronial inquest. As such, I consider that disclosure of the personal information in the documents would be unreasonable.
21. I therefore find that the material is conditionally exempt under s.47F(1) of the FOI Act.

Application of the 'public interest' test

22. 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.
23. 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.
24. I acknowledge that release of the documents would promote the objects of facilitating and promoting public access to information.
25. I consider that release of the personal information would inform debate on a matter of public importance.
26. I do not consider that release of the information would promote effective oversight of public expenditure or allow a person (the applicant) to access their own personal information.
27. In contrast, I consider that the protection of the individuals' right to privacy should be given the upmost importance. The FOI Act includes a right of privacy to deceased persons/their families.
28. I note also that much of the detailed personal information about Mr Faysal Ahmed is currently being reviewed by the Queensland Coroner, who is investigating Mr Ahmed's death. I am concerned that release of Mr Ahmed's detailed personal information, while the coronial inquest is ongoing, could pre-empt or be unhelpful to the inquest. I do not consider this would be in the public interest.
29. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the documents is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under s.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) of the FOI Act

30. I find that the documents relevant to your request contain material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the documents released.

31. The material deleted under s.22(1)(a)(ii) consists of:

- material not within scope of the request (for example, emails from journalists to the Department); and
- the names of non-Senior Executive Service Departmental staff, service provider staff and staff direct contact details. The intention to treat this information as irrelevant was advised to you in the Department's acknowledgment letter sent to you on 9 February 2016. You did not raise any objections to this approach.



Authorised decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

~~April 2017~~
01 May 2017.



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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Document No.	Date of document	Folios	Description	Relevant legislation (FOI Act)	
1.	19/09/2015	1-3	Email and attachment	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii)
2.	21/09/2015	4-5	Email	Irrelevant material deleted	s.22(1)(a)(ii)
3.	21/09/2015	6-9	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii) s.47F(1)
4.	21/09/2015	10-11	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in Part	s.33(a)(iii)
5.	22/09/2015	12-13	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii) s.47F(1)
6.	2/10/2015	14-15	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii)

Document No.	Date of document	Folios	Description	Relevant legislation (FOI Act)	
7.	3/11/2015	16-17	Document	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii)
8.	20/04/2016	18-19	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii)
9.	19/04/2016	20-21	Email	Irrelevant material deleted	s.22(1)(a)(ii)
10.	20/04/2016	22	Document	Irrelevant material deleted	s.22(1)(a)(ii)
11.	23/12/2016	23-26	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
12.	24/12/2016	27-31	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
13.	24/12/2016	32-33	Email	Irrelevant material deleted	s.22(1)(a)(ii)
14.	26/12/2016	34	Email	Irrelevant material deleted	s.22(1)(a)(ii)
15.	27/12/2016	35-38	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
16.	27/12/2016	39	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
17.	27/12/2016	40-41	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
18.	27/12/2016	42-43	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)

Document No.	Date of document	Folios	Description	Relevant legislation (FOI Act)	
19.	27/12/2016	44-45	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
20.	27/12/2016	46-49	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
21.	27/12/2016	50-52	Email	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
22.	30/12/2016	53-59	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
23.	29/12/2016	60-68	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)
24.	30/12/2016	69-75	Email and attachments	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.47F(1)