



8 November 2017

**In reply please quote:**

FOI Request: FA 17/09/00933  
File Number: ADF2017/102224

Dear [REDACTED]

**Freedom of Information (FOI) request - Access Decision**

On 14 September 2017, the Department of Immigration and Border Protection (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following document:

*All communications referencing 'Charlie Benjamin'. This includes references to just his last name. This request is in reference to the Australian-run processing centre on Manus Island in Papua New Guinea. Mr Benjamin is Governor of Manus province.*

**2 Authority to make decision**

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

**3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from the relevant business areas
- the Department's guidance material on the FOI Act

#### **4 Document in scope of request**

The Department has identified five documents, as per the attached schedule of documents, as falling within the scope of your request. These documents were in the possession of the Department on 14 September 2017 when your request was received.

#### **5 Decision**

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release information contained in one document which is relevant to your request in full
- Exempt three documents in full from disclosure
- Exempt one document in part from disclosure

##### **5.1 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 27 September 2017, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that parts of Documents 2 and 3 marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the document, with the irrelevant material deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

#### **6 Reasons for Decision**

For the reasons set out below, I have exempted certain information within the documents.

#### **7 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations**

***Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.***

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 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 be real and substantial grounds for the conclusion that are supported by evidence.

I consider that the information detailed in the Documents 1, 3, 4 and 5 relates to a foreign government and provides an insight into diplomatic and operational relationships in the context of humanitarian matters.

I have consulted with the relevant business areas of the Department concerning the information regarded as exempt under s.33(a)(iii). I consider that releasing the documents marked 's.33(a)(iii)' would adversely impact on the ability of the Department to maintain good working relations with the Government of Papua New Guinea.

The business area within the Department that is responsible for managing relationships with international partners has advised that releasing the documents marked 's.33(a)(iii)' would adversely impact the ability of the Department, and as result, the Australian Government, to maintain good working relations with the Government of Papua New Guinea.

This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australian Government's relationship with the Government of Papua New Guinea.

I consider that the disclosure of the exempted information contained within the documents would disclose information that may adversely impact upon Australia's relations with foreign states by inhibiting future negotiations between the Australian Government and a foreign government relating to humanitarian matters.

As such, information within the document is exempted 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.

## **8 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

## **9 Your Review Rights**

### Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

By email to: [foi.reviews@border.gov.au](mailto:foi.reviews@border.gov.au)

OR

By mail to:  
Freedom of Information Section  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## **10 Making a Complaint**

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

## **11 Contacting the FOI Section**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au).



Authorised Decision Maker  
FOI, Privacy and Records Management Branch  
Corporate Services Division  
Department of Immigration and Border Protection



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request: FA 17/09/00933  
File Number: ADF2017/102224

No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	April 2014	1-2	Draft letter from the Department to Mr Benjamin	Exempt in full	s.33(a)(iii)
2.	9 May 2014	3-4	Letter from High Commissioner Port Moresby to Mr Benjamin	Irrelevant material deleted	s.22(1)(a)(ii)
3.	30 Sept 2014	5-12	Internal emails and attachment	Irrelevant material deleted	s.22(1)(a)(ii)
				Exempt in part	s.33(a)(iii)
				Pages 8-12	s.33(a)(iii)
				Exempt in full	
4.	Sept 2014	13-15	Talking Points	Exempt in full	s.33(a)(iii)
5.	Sept 2014	16-17	Further background	Exempt in full	s.33(a)(iii)