



Australian Government

Department of Immigration  
and Border Protection

## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 16/01/00478

File Number ADF2016/1419

#### Scope of request revised on 11 May 2016

*'I request access to the **final review reports** for investigations/inquiries conducted by the Department of Immigration and Border Protection into allegations against service provider staff of abuse, neglect or mistreatment of detainees **held detained at offshore processing centres on Manus Island and Nauru** for the 2015 calendar year'.*

*NB. I am requesting the final reports for all investigations conducted after an allegation of mistreatment against processing centre staff. I do not require anything other than the final report that details the allegation, subsequent investigation and department's finding. I have limited the time period to one year'.*

#### 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 documents or to amend or annotate Departmental records.

#### Information considered

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 (the Guidelines)
- Departmental documents,
- consultations with relevant business area.

#### Reasons for decision

I have considered the document within the scope of your request and applied exemptions in part to the document.

#### Legislation

A copy of the FOI Act is available for your reference from  
[www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal](http://www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal)

If you are unable to access the legislation through this website, please contact our office for a copy.

### **Deletion of exempt or irrelevant material under s.22 of the FOI Act**

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.

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 the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

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.

As mentioned in the covering letter, one document was identified that falls within the scope of your request. I have decided that parts of the document would disclose information that is not relevant to your request. This information consists of Departmental staff names and telephone numbers.

### **Section 33 - documents affecting national security, defence or international relations**

Section 33 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 security, defence or international relations of the Commonwealth.

I have formed the view that there are real and substantial grounds for consideration that the disclosure of the information exempted under section 33(a)(iii) would or could reasonably be expected to cause damage to the international relations of the Commonwealth.

I note in regard to the damage which I consider would result to the international relations between that foreign government, and the Commonwealth, the Guidelines also state:

*5.30 '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 government agencies'.*

The international relations information exempt, under section 33(a)(iii) of the FOI Act relates to Australia maintaining good working relations with other governments and their officials. Any damage to international confidence and close relationships with other countries would seriously affect the Department's ability to deliver on its obligations to protect Australia's interests. Release of information about the Department's relationships with other governments and officials, would cause damage to Australia's relations with those foreign countries, and is therefore exempted under section 33(a)(iii).

The material I have decided to exempt comprises details of allegations which are unsubstantiated and which are not supported by the Department in relation to the regional processing centre and if that material were to be disclosed, it would damage the good relations of the Commonwealth with a foreign government. I consider this would have a flow-on effect which would impact on any future negotiations that Australia may engage in, in its role of maintaining good working international relations with its counterparts in Papua New Guinea at the Manus Regional Processing Centre.

Accordingly all information in relation to the regional processing centre has been exempted under section 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.

### **Section 47C(1) - deliberative processes**

Section 47C provides that documents are conditionally exempt if disclosure would disclose matter (**deliberative matter**). I found that the document contains material in respect of which a claim for exemption under subsection 47C(1) of the FOI Act is warranted.

Subsection 47C(1) of the FOI Act states '*A document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative process involved in the functions of...an agency... or a Minister.*' Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

I have taken into account the Guidelines noting that one consideration in the exemption under section 47C is whether the document includes content of a specific type, namely deliberative matter. I have determined that some of the material contained in the document is exempt under section 47C as it is deliberative.

I then turned my mind to the question of purely factual material, as is required by section 47C, and I have taken into account the Guidelines that 'purely factual material' that would not be regarded as deliberative matter include:

- content that is merely descriptive;
- incidental administrative content;
- procedural or day-to-day content;
- the decision or conclusion reached at the end of the deliberative process; and
- matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process.

I have formed the view that the matter contains a small amount of deliberative material in the form of the author's opinion when conducting a review into the allegations of misconduct at the Manus Regional Processing Centre. I consider that release of this information may compromise specific operations of the Department which is unsubstantiated. In my view, release of the identified deliberative matter in the document could do harm in the way the Department manages specific operations.

As such, and taking into consideration the above factors, I have decided to exempt this material under s47C(1) of the FOI Act.

### **Section 47E(d) - substantial adverse effect on the proper and efficient conduct of the operations of an agency**

Section 47E(d) provides that documents are conditionally exempt if disclosure would, or could, reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I have considered whether the information is conditionally exempt on the basis that disclosure would result in a substantial adverse effect on the proper and efficient conduct on the operations of the Department and its contracted service providers under section 47E(d) of the FOI Act.

The document contains information in relation to how the Department manages and carries out reviews into allegations of misconduct or inappropriate behaviour. I consider that the release of this information pertains to specific operations in the Department and the release of this information would likely result in considerable damage to the way in which such operations are managed, and would result in necessary changes being made to the operations relating to how those operations are managed in the future.

I have decided that the disclosure of this material could have a substantial adverse effect on the agency's ability to perform its functions, as release would disclose existing processes and methods for conducting reviews which are sensitive in nature.

I have formed the view that the disclosure of this information:

- would damage the relationship of trust that the Department has with its contractors
- could prejudice the ability of the Department and its contractors to conduct such reviews and procedures by revealing the methodology on how these matters are managed.

The exempt material contains specific and direct information about the management of regional processing centres and the Department's management of contracted service providers.

As detailed above, many of these details are not publicly known and are considered sensitive operational information, restricted to those who have a need-to-know. Disclosure of this information could reasonably be expected to adversely affect the proper and efficient conduct of the Agency's operations.

As such, I consider this adverse effect to be serious and not insubstantial, and I therefore find that disclosure of parts of the document, are conditionally exempt under section 47E(d) of the FOI Act.

Nonetheless I must give access to the document unless, in the circumstances, access at this time would on balance be contrary to the public interest. I have addressed the public interest at the end of this decision.

#### **Section 47F – documents affecting personal privacy**

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.

#### ***Personal information***

Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Privacy Act). Personal information is defined in section 6 of the Privacy Act as:

- information or an opinion about an identified individual, or an individual who is reasonably identifiable
- whether the information or opinion is true or not
- whether the information or opinion is recorded in a material form or not.

The elements of 'personal information' are:

- it relates only to a natural person (not, for example, a company)
- it says something about the individual
- it may be in the form of an opinion, it may be true or untrue, and it may form part of a database
- the individual's identity is known or is reasonably ascertainable using the information in the document.

Specifically, the document contains personal information about members of the public, identifying information of third parties, email addresses and phone numbers, which would identify the individuals involved

I am satisfied that parts of this document over which an exemption under section 47F is claimed, contain personal information.

### ***Disclosure unreasonable***

If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:

- the extent to which the information is well known
- 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
- the availability of the information from publicly accessible sources
- any other matter I consider relevant.

On that basis, I have concluded that disclosure of the information would be unreasonable. I find that the document is conditionally exempt in part under section 47F of the FOI Act.

### **Section 47G(1) - affect business affairs <and/or> prejudice the future supply of information**

Section 47G(1) of the FOI Act permits conditional exemption of documents containing information concerning business or professional affairs of the business, commercial or financial affairs of an organisation if disclosure:

- would or could reasonably be expected to unreasonably affect a business in respect of its lawful business, commercial or financial affairs; or
- could reasonably be expected to prejudice the future supply of information to the Department.

I have considered whether the document is conditionally exempt on the basis that the disclosure of the information would have an unreasonable adverse effect on the business affairs of an organisation under section 47G(1)(a) of the FOI Act.

### ***Business affairs information***

I find that parts of the document exempted under section 47G(1)(a) contain information pertaining to serious allegations about the named contractors and their staff. I consider that this information would damage the reputation and integrity of the business and would cause detriment and if released, financial loss and unnecessary stress to the business owners.

### ***Adverse effect***

I find that disclosure of this information would, or could reasonably be expected to, adversely affect those parties in respect of their lawful business affairs. I consider it would be unreasonable to disclose this information as disclosure would result in loss of business and loss of profit and result in damage to the reputations of those businesses.

### ***The adverse effect is unreasonable***

I find that this adverse effect would be unreasonable in all the circumstances. In finding that the adverse effect would be unreasonable, I have considered that if consulted, the third parties named in this document would object to the disclosure of this sensitive business information which would ultimately reveal unsubstantiated allegations in relation to those businesses.

### **Public interest**

The public interest test is outlined in section 11A of the FOI Act, and requires that the Department must give the applicant access to the documents, unless in the circumstances, access to that document at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act). I have considered the factors favouring access and factors that are irrelevant in subsections 11B(3) and (4), below.

**Factors in favour of disclosure**

In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- disclosure would promote the objects of the FOI Act
- disclosure would promote effective oversight of public expenditure
- disclosure would allow a person to access his / her own personal information
- disclosure would inform debate on a matter of public importance.

**Factors against disclosure**

I have considered the following factors against disclosure for the material identified as exemptions under s47C(1), s47E(d), s47F(1) and s47G(1)(a):

- disclosure would unreasonably reveal deliberative material about the functions of the Department and how it undertakes investigations and reviews, thus preventing deliberations to occur in a transparent and proper manner.
- disclosure would damage relationships between the Department and its contractors
- disclosure would unreasonably interfere with the privacy of third parties
- disclosure would unreasonably interfere with the private business affairs of third parties
- disclosure would prejudice the Department and its contractors ability to conduct effective investigations where a possible breach of the Commonwealth law has occurred, and such would require the Department significantly modify its operations.

**Finding on the public interest**

I acknowledge that there is a public interest in documents of this Department being made available to the public for the purpose of encouraging public debate and to promote oversight of the Department's activities. However, having regard to the nature of the document in question, I do not consider that disclosure of the exempt material would facilitate any of these objects.

In this case, I have formed the view that disclosure of the exempt material will make a negligible contribution to those factors in favour of disclosure. There is minimal public interest in this information being known, much of which is unsubstantiated allegations. By contrast the interference with the privacy of individuals is, in my view, significant. In forming my view on the question of public interest, I have attributed the greatest weight to this factor.

Accordingly, I have concluded that disclosure of the material would, on balance, be contrary to the public interest and that parts of the document are exempt under the FOI Act.

In relation to this exemption, I have taken into account the same factors in favour and against disclosure.

The attached document identifies the sections where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.



✓ Authorised decision maker  
Department of Immigration and Border Protection

Email [foi@border.gov.au](mailto:foi@border.gov.au)  
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