



28 September 2018

[Redacted]

**In reply please quote:**

FOI Request: FA 17/08/01128  
File Number: ADF2018/180816

Dear [Redacted]

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

On 18 August 2017, the Department of Immigration and Border Protection received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

[Redacted]

On 20 December 2017, the Home Affairs Portfolio, including the Department of Home Affairs, was formally established. The Department of Home Affairs includes the entirety of the Department of Immigration and Border Protection, the Australian Border Force and the Office of Transport Security from within the Department of Infrastructure and Regional Development. It also includes specific functions from the Attorney-General's Department, the Department of Social Services and the Department of the Prime Minister and Cabinet.




As such, a decision has now been made on your request by the Department of Home Affairs.

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

**1 Scope of request**

You requested access to the following:

[Redacted]

- 
- (a) *All policies, protocols and procedures, however described, relating to the transfer of immigration detainees from Christmas Island to Manus Island that were in effect*  
*including but not limited to the classification of potential transferees, their assessment for suitability for transfer, including medical suitability, and how decisions were made to transfer an immigration detainee from Christmas Island to an offshore processing centre;*
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- (g) *Documents recording or referring to the ability of disabled individuals to secure:*
- a. *physical adjustments to their living environment on Manus Island;*

- b. medical care and treatment for their illness;*
  - c. access to occupational therapists, physiotherapists and disability facilities; on Manus Island generally;*
- (h) Reports and any documents recording any assessments or reviews of the medical facilities and services available to people with mental illness on Manus generally undertaken by the Department of Immigration, Border Force or on either of their behalf.*
- (i) All documents recording policies and procedures for caring for people with disabilities once they arrived on Manus Island from January, 2014 to date.*

On 28 August 2017, the Department wrote to you in relation to the scope of your request, and suggested that it be processed as two separate requests. The first part of the request would be processed as a request for personal information [REDACTED] and would be processed by our team in NSW. The second part of your request, which related to fundamentally non-personal information, would be processed by our FOI team in Canberra. The scope of that part of your request was agreed as follows:

*All policies, protocols and procedures, relating to the transfer of immigration detainees from Christmas Island to Manus Island that were in effect [REDACTED] including the classification of potential transferees, their assessment for suitability for transfer, medical suitability, and how decisions were made to transfer an immigration detainee from Christmas Island to an offshore processing centre;*

*Documents relating to the classification of potential transferees, their assessment for suitability for transfer, including medical suitability, and how decisions were made to transfer an immigration detainee from Australia to an offshore processing centre;*

*Documents recording or referring to the ability of disabled individuals to secure:*

- a. physical adjustments to their living environment on Manus Island;*
- b. medical care and treatment for their illness;*
- c. access to occupational therapists, physiotherapists and disability facilities; on Manus Island generally;*

*Reports and any documents recording any assessments or reviews of the medical facilities and services available to people with mental illness on Manus generally undertaken by the Department of Immigration, Border Force or on either of their behalf.*

*All documents recording policies and procedures for caring for people with disabilities once they arrived on Manus Island from January, 2014 to date.*

On 28 August 2017, you agreed to this approach.

On 30 August 2017, the Department formally acknowledged the second part of your request.

## **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 documents 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 Departmental officers with responsibility for matters relating to the documents to which you sought access.

### 4 Documents in scope of request

The Department has identified 14 documents as falling within the scope of your request. These documents were in the possession of the Department on 18 August 2017, when your request was received.

**Attachment A** is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

### 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 two documents in full
- release 10 documents in part with deletions
- exempt two documents in full from disclosure.

### 6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

#### 6.1 ***Section 22 of the FOI Act – Access to edited copies with exempt or irrelevant matter deleted***

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would be exempt or reasonably 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 be exempt or reasonably regarded as irrelevant to the request.

On 31 August 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 marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have also decided that parts of the documents are exempt from disclosure. I have therefore prepared an edited copy of the documents, with the exempt and irrelevant material deleted pursuant to section 22 of the FOI Act.

## **6.2 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.

The information detailed in the documents relates specifically to information belonging to the Government of Papua New Guinea (PNG). These are matters for which the Government of PNG has overall responsibility. I consider that the information relates to a foreign government and provides an insight into diplomatic and operational relationships in the context of Australia's bilateral relationship with the Government of PNG.

I have consulted with the relevant business areas of the Department concerning the information regarded as exempt under section 33(a)(iii). I consider that releasing the information marked 's33(a)(iii)' would adversely impact on the ability of the Department to maintain good working relations with the Government of PNG.

It is important for Australia to maintain good working relationships with coalition partners. Our agency advisers with close working responsibility for those relationships consider that disclosure of the material in the documents could reasonably be expected to damage Australia's relationship with that foreign government, based on that government's previous advice about the handling of material concerning it. As such, I accept that advice.

As such I have decided that the information redacted and marked 's33(a)(iii)' is exempt from disclosure under section 33(a)(iii) of the FOI Act.

## **6.3 Section 47E of the FOI Act – Operations of Agencies**

Section 47E(d) of the FOI Act 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 consider that the disclosure of the parts of documents marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational activities used in



undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational activities would result in the need for this Department, and potentially its partner agencies, to change those operational activities to avoid jeopardising their future effectiveness.

Some information marked 's47E(d)' consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

Accordingly, I have decided that parts of the documents marked 's47E(d)' are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

#### **6.4 Section 47F of the FOI Act – Personal Privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s4 of the FOI Act and s6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the document would disclose personal information relating to a third party. [REDACTED]

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *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 available resources*
- *any other matters that I consider relevant.*

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individual concerned is not generally known to be

associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third party would be relevant to the broader scope of your request, as you are seeking access to information about policy and procedure documents rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the document would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

### **6.5 The public interest – section 11A of the FOI Act**

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.



Disclosure of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents:

- disclosure of the parts of the documents that are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice operational activities of the Department and, as a result, the ability of the Department to protect Australia's borders. I consider that this factor weighs heavily against disclosure.
- disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of that individual's right to privacy.
- The Department is committed to complying with its obligations under the Privacy Act 1988, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that this factor weighs heavily against disclosure of the personal information contained within the document.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- 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.

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

## **7 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.

## **8 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@homeaffairs.gov.au](mailto:foi.reviews@homeaffairs.gov.au)

OR

By mail to:  
Freedom of Information Section  
Department of Home Affairs  
PO Box 25  
BELCONNEN ACT 2617

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*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>.

## **9 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 Home Affairs as the relevant agency.

## **10 Contacting the FOI Section**

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



**Authorised Decision Maker**  
**Department of Home Affairs**

## ATTACHMENT A

### SCHEDULE OF DOCUMENTS REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 17/08/01128

File Number: ADF2018/45326

No.	Date of document	No. of pages	Description	Decision on release	
1.	24 March 2012	21	Detention Services Manual - Chapter 6 Detention Health - Identification & support of survivors of torture and trauma	Partial	47E(d)
2.	15 May 2012	28	Detention Services Manual - Chapter 6 Detention Health - Psychological support program (PSP)	Partial	47E(d)
3.	1 July 2013	15	Detention Services Manual - Chapter 6 Detention Health - Mental Health screening	Full	
4.	24 July 2013	7	Papua New Guinea (PNG) Regional Resettlement Arrangement (RRA) Transfer Operation: 7	Partial	s 22(1)(a)(ii), s 47E(d)
5.	29 July 2013	7	Blank pre-transfer assessment form - Version 0.2	Partial	s 47E(d) s 47F(1)
6.	23 November 2013	23	Detention Services Manual - Chapter 6 Detention Health – Food/fluid refusal	Partial	s 47E(d)
7.	23 November 2013	14	Detention Services Manual - Chapter 6 Detention health - General health screening and management	Partial	s 47E(d)
8.	23 November 2013	16	Detention Services Manual - Chapter 6 Detention Health - Health discharge assessment	Partial	s 47E(d)
9.	December 2013	20	Christmas Island - Detention Operations - Transfers to Offshore Processing Centres Standard Operational Procedures - 2013	Partial	s 22(1)(a)(ii), s 47E(d)
10.	12 March 2014	57	Offshore Processing Centres Nauru and Manus Island - Review of Welfare and Case Management Services	Partial	s 22(1)(a)(ii)
11.	2016	22	Assessment of Emergency Medical Capability and Capacity PNG 2016	Previously released under <a href="#">FA17/05/01128</a> <a href="#">0</a>	s 22(1)(a)(ii), s 33(a)(iii)



No.	Date of document	No. of pages	Description	Decision on release	
12.	February 2017	80	Review of mental Health Care in Papua New Guinea - Independent Review Report	Exempt in full	s 33(a)(iii)
13.	November 2017	35	Detention Assurance Team Case Review 11-2017 - Provision of services to Mr Shamshiripour	Release in full	s 22(1)(a)(ii)
14.	June 2018	80	Review of Mental Health Care in Papua New Guinea - Independent Review Report	Exempt in full	s 33(a)(iii)