



21 September 2018

**In reply please quote:**

FOI Request: FA 18/06/00469

File Number: ADF2018/87562

Dear [REDACTED]

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

On 8 June 2018, the Department of Home Affairs (the Department) received a request for access to documents 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 documents:

- (a) *Formal agreements between the governments of Australia, Nauru, Papua New Guinea, and/or China and/or the authorities in Taiwan relating to the provision of medical care and treatment for individuals, transferred to Nauru or Papua New Guinea under s198AD of the Migration Act, in Taiwan;*
- (b) *Documentation relating to informal agreements between the governments of Australia, Nauru, Papua New Guinea, and/or China and/or the authorities in Taiwan relating to the provision of medical care and treatment for individuals, transferred to Nauru or Papua New Guinea under s198AD of the Migration Act, in Taiwan; and*
- (c) *Copies of all files, documents and records both paper and electronic relating to any formal or informal agreement for the provision of medical services to individuals transported under s198AD in Taiwan, including but not limited to internal and external correspondence, reports, memos, internal and external emails, minutes of meetings, records of telephone conversations, and any and all information held on file. For the sake of clarity, this does not constitute a request for files relating to the treatment of any individual.*

On 3 July 2018, the Department wrote to you to advise you that your request captured a large number of documents. We sought to clarify the scope of your request and reduce the number of documents that would be captured by it.

On 13 July 2018, you responded confirming that your request should be modified to the following documents:

- (a) *A copy the final signed version of any formal Memorandum of Understanding between the governments of Australia, Nauru, Papua New Guinea, and/or China and/or the authorities in Taiwan relating to the provision of medical care and treatment in Taiwan for individuals who have previously been transferred to Nauru or Papua New Guinea under s198AD of the Migration Act*
- (b) *A copy of the final versions of any informal agreements between the governments of Australia, Nauru, Papua New Guinea, and/or China and/or the authorities in Taiwan relating to the provision of medical care and treatment in Taiwan for individuals who have previously been transferred to Nauru or Papua New Guinea under s198AD of the Migration Act*
- (c) *A copy of the final versions of any Briefs provided to the Minister, Secretary or Senior Executive within the Department relating to the provision of medical care and treatment in Taiwan for individuals who have previously been transferred to Nauru or Papua New Guinea under s198AD of the Migration Act*

Specifically excluding:

- *Drafts of any relevant documents that have ultimately been finalised*
- *Media Statements, Talking Points and other products from the Communication and Engagement Branch*
- *Any documents that would be subject to Legal Professional Privilege.*

## **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 13 documents as falling within the scope of your request. These documents were in the possession of the Department on 8 June 2018 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 10 documents in part with deletions
- Exempt three 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 – 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 13 June 2018, 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.

Parts of documents 6 and 7 do not relate to your request as they do not relate to “*provision of medical care and treatment in Taiwan*”. In addition, the attachments to document 9 consist entirely of communications strategies and talking points, which you have specifically excluded from the scope of your 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, and have therefore prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 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.

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

**Section 33(b)** provides that a document is an exempt document if disclosure would divulge information or matter communicated in confidence by a foreign government, an authority of a foreign government or an international organization to the Commonwealth.

The Information Commissioner Guidelines state that information is communicated in confidence by or on behalf of another government if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Where the information is, in fact confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations.

The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access to that communication.



An agreement to treat documents as confidential does not need to be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communications.

Taiwan and Australia agreed the MOU in confidence, and the document includes express clauses to the confidential nature of the agreement.

As such, I have decided that the release of documents 1, 2, 4, Attachment A, B and D to document 5, and parts of documents 5, 6, 8 and 9 would divulge information agreed in confidence by, or on behalf of a foreign government to the Commonwealth of Australia, and the documents are exempt from disclosure under section 33(b) of the FOI Act.

**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.

Given the terms of the MOU, and the express statement of confidentiality contained within, I consider that the release of the document and any reference to the terms of the agreement contained within that document, would, or could reasonably be expected to cause damage to the Australian Government's international relations.

I have decided that in addition to being exempt under section 33(b) of the FOI Act (as referred to above) I am also satisfied that the document is exempt from disclosure under section 33(a)(iii) of 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:

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

By mail to:  
Freedom of Information Section  
Department of Home Affairs  
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>.

## **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 18/06/00469

No	Date of document	No. of pages	Description	Decision on release	
1.	12/09/2017	12	Memorandum of Understanding and Operational Guidelines	Exempt in full	33(b) 33(a)(iii)
2.	11/10/2017	1	Letter from Australian Government to Taipei Economic and Cultural Office in Australia	Exempt in full	33(b) 33(a)(iii)
3.	18/6/2018	2	Letter from Department of Home Affairs	Release in part	33(a)(iii)
4.	Undated	35	Medical Transfers from Nauru to Taiwan Standard Operating Procedure	Exempt in full	33(b) 33(a)(iii)
5.	29/6/2017	4	Minute – Taiwan Medical Transfers Agreement	Release in part	22(1)(a)(ii) 33(b) 33(a)(iii)
			Attachment A – MOU (document 1 above)	Exempt in full	33(b) 33(a)(iii)
			Attachment B Operational Guidelines (document 1 above)	Exempt in full	33(b) 33(a)(iii)
		6	Attachment C MS-001749 Ministerial Submission	Release in part	33(b) 33(a)(iii)
		14	Attachment D Report on Taiwan Adventist Hospital by HSPD's Clinical Advisor	Exempt in full	33(b) 33(a)(iii)
6.	Aug 2017	18	Department of Immigration and Border Protection Delegation – Visit to Taipei, Taiwan – Medical Transfers workshop	Release in part	33(b) 33(a)(iii) 22(1)(a)(ii)
7.	Oct 2017	2	Third Country Medical Transfer Arrangements - FAS International Background Brief	Release in part	33(a)(iii) 22(1)(a)(ii)
8.	5/12/2017	4	Ministerial Submission MS17-004112	Release in part	33(b) 33(a)(iii) 22(1)(a)(ii)
9.	6/12/2017	4	Minute – update on Taiwan medical transfers and clearance of Comms Strategy	Release in part	33(b) 33(a)(iii) 22(1)(a)(ii)

No	Date of document	No. of pages	Description	Decision on release	
10.	30/01/2018	4	Ministerial Submission MS18-000236	Release in part	33(a)(iii) 22(1)(a)(ii)
11.	February 2018	2	Third Country Medical Transfer Arrangements – FAS International Background Brief	Release in part	33(a)(iii) 22(1)(a)(ii)
12.	May 2018	2	Budget Estimates Brief – FAS International Policy Division – Third Country Medical Transfer Arrangements	Release in part	33(a)(iii) 22(1)(a)(ii)
13.	20/06/2018	2	Meeting Brief	Release in part	33(a)(iii)