



5 November 2018

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 15 October 2018, the Department of Home Affairs (the Department) received four separate requests 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 each of these requests for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

FOI Request: FA 18/10/00764

The briefings prepared for the Minister for Home Affairs Peter Dutton and/or the Minister for Immigration, Citizenship and Multicultural Affairs David Coleman in regards to Medicins Sans Frontieres being ordered to cease providing mental health services on Nauru.

FOI Request: FA 18/10/00769

Any correspondence from Medicins Sans Frontieres sent to the Department of Home Affairs with regards to MSF's activities on Nauru from November 2017 to October 2018.

FOI Request: FA 18/10/00770

Any correspondence from Medicins Sans Frontieres sent to the Minister for Home Affairs Peter Dutton with regards to MSF's activities on Nauru from November 2017 to October 2018.

FOI Request: FA 18/10/00771

Any correspondence between the Minister for Home Affairs Peter Dutton and any members of the Nauruan government in regards to Medicins Sans Frontieres' provision of mental health services on Nauru, and to the request MSF cease providing those services in October 2018.

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 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

FOI Request FA 18/10/00764

The Department has identified two documents as falling within the scope of this request. These documents were in the possession of the Department on 15 October 2018 when your request was received.

FOI Requests FA 18/10/00769, FA 18/10/00770 and FA 18/10/00771

The Department has undertaken reasonable searches in relation to the documents you have requested access to. This includes searches of the Parliamentary Document Management System (PDMS), which contains a record of all Ministerial Correspondence.

Having regard to your request and the types of documents that may fall within the scope of your request I am satisfied that the searches conducted were extremely thorough and all reasonable steps have been taken to locate any document relevant to your request.

5 Decision

Section 24A of the FOI Act provided that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has undertaken reasonable searches in relation to requests FA 18/10/00769, FA 18/10/00770 and FA 18/10/00771 and that no documents were in the possession of the Department on 15 October 2018 when your FOI requests were received. As such I am refusing access to the documents requested by you under FA 18/10/00769, FA 18/10/00770 and FA 18/10/00771 based on the application of section 24A of the FOI Act.

The decision in relation to the documents in the possession of the Department which fall within the scope of request FA 18/10/00764 is to:

- release relevant information in one document in full, and
- release relevant information in one document in part with deletions.

6 Reasons for Decision

Detailed reasons for my decision 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.

The documents that fall within the scope of your FOI request cover a number of matters. There is one paragraph in document 1 and four paragraphs in document 2 which are relevant to your request.

I have decided that parts of document marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request as they do not relate to Médecins Sans Frontières. I have therefore prepared an edited copy of the document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

6.2 Section 33(a)(iii) of the FOI Act – Documents affecting 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 contained in the document relates to regional processing arrangements in Nauru. The Republic of Nauru is a sovereign nation and the Government of Nauru is responsible for regional processing in Nauru.

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 Nauru. 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 Nauru.

As such I have decided that the information marked 's33(a)(iii)' in 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:

By email to: foi.reviews@homeaffairs.gov.au

OR

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

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.



**Authorised Decision Maker
Department of Home Affairs**