



22 June 2018

In reply please quote:

FOI Request: FA 16/05/00772
File Number: ADF2016/20066

Dear

**Freedom of Information (FOI) request – revised decision under section 55G of the
Freedom of Information Act 1982 (FOI Act)**

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

The former Department of Immigration and Border Protection (DIBP) received your access request on 10 May 2016 and made a decision on the request on 5 June 2017. On 12 September 2017 you requested an Information Commissioner review of the decision under section 54L of the FOI Act.

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 former DIBP. As such all future actions on your request will be taken by the Department of Home Affairs (the Department).

On 24 April 2018, the Office of the Australian Information Commissioner provided the Department with a preliminary view in relation to the review request. In response, the Department is providing you with a revised decision under section 55G of the Act.

1 Scope of request

You requested access to the following documents:

- 1) *The DIBP final Estimates Briefing and attachments provided to the Executive at Senate Estimates during the latest Estimates Briefing which contains information about Reports of critical incidents, involving asylum seeker/s. By this, I mean the latest Estimates Briefing where this information was prepared for the Estimates Briefing.*

and

- 2) *The DIBP final Ministerial Briefing and attachments containing information about reports of critical incidents, involving asylum seeker/s, since January 1, 2016. i.e.. the latest ministerial briefing and attachment on this subject..*

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
- the Department's guidance material on the FOI Act

4 Identification of documents within scope of request

The Department has identified four documents as falling within the scope of your request, comprising 39 pages in total. These documents were in the possession of the Department on 10 May 2016 when it received your request.

Attachment A is a schedule which describes the relevant documents and sets out my decision on each of them.

5 Decision

My decision on the documents within the scope of your request is:

- to release three pages of the documents in full
- to release 36 pages of the documents in edited form, on the grounds that they contain exempt or irrelevant material.

I have provided below my reasons for finding that material in the documents is exempt from disclosure or irrelevant to your request.

6 Reasons for decision: irrelevant material

6.1 Section 22(1)(a)(ii) of the FOI Act – irrelevant to request

Section 22(1)(a)(ii) of the FOI Act applies if an agency or Minister decides that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

I have decided that the parts of documents that I have marked using the 's. 22(1)(a)(ii)' redaction would disclose information that could reasonably be regarded as irrelevant to your request. The material in question is about incidents that do not fall within the Department's definition of a 'critical incident'. As your request is for documents relating to critical incidents, I have determined this material to be outside the scope of your request under section 22(1)(a)(ii) of the FOI Act.

I consider the remaining parts of the documents to be relevant to your request.

7 Reasons for decision: exemptions

7.1 Section 33 of the FOI Act – documents affecting national security, defence or international relations

Section 33(a)(iii) of the FOI Act provides that a document is exempt if its disclosure would or could reasonably be expected to cause damage to the international relations of the Commonwealth.

I have decided that section 33(a)(iii) applies to certain documents within the scope of the request. These documents contain information about:

- incidents involving transferees residing in the Nauru Regional Processing Centre (RPC) and refugees living in the community in Nauru, including descriptions, dates, incident numbers, category, summaries and information about the Nauru Police Force's response to incidents
- strategies and programs implemented by the Government of Nauru to support the operations of the RPC and the settlement of refugees, as contained on page 4
- contractors and subcontractors of the Department providing garrison and welfare, and medical services at both Nauru and Manus RPCs.

As indicated in section 5.30 of the Information Commissioner guidelines:

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.

In my opinion, disclosure of the documents in question would adversely impact the ability of the Australian government to maintain good working relations with the governments of Nauru and Papua New Guinea.

In relation to information about *incidents that occurred in Nauru and strategies implemented by the government of Nauru to support the operations of the RPC and the settlement of refugees*, I have given significant weight to the request from the Government of Nauru that the Department not release information about Nauru government operations under FOI. I have taken that advice to apply to all the material about Nauru government operations, including details of incidents, where that information is not already in the public domain.

I further note that Nauru is a sovereign nation and the Nauru Police Force has responsibility for responding to incidents referred for police investigation. The Australian Government does not have extraterritorial control, governance or jurisdiction in relation to incidents that occur in Nauru.

In relation to *documents containing information about contractors and subcontractors providing detention and medical services at Nauru and Manus Island RPCs*, the disclosure of this material would have an adverse impact on the capacity of the governments of Australia, Nauru and Papua New Guinea to negotiate contracts for the provision of future services under regional processing arrangements.

The Department has contracted and funded companies to deliver services to transferees and refugees in Nauru and Papua New Guinea. These contracts support the governments of Nauru and Papua New Guinea administer arrangements under the respective Memoranda of Understanding.

The public disclosure of information about the performance (either positive or negative) of the private companies identified in the documents would result in a loss of trust between the governments of Australia and contractors. Where the information alleges the involvement of employees of contracted service providers in incidents, disclosure would result in negative publicity and reputational damage to the service provider. This in turn would compromise the relationship between the Department and the contractors and jeopardise the capacity to negotiate to vary or extend the contracts or enter into new contracts in the future.

In forming this opinion I have also had regard to previous advice from the Chief Migration Officer of Papua New Guinea's Immigration and Citizenship Authority, who advised that the release of information relating to the operations of the former Manus RPC would harm international relations between Australia and Papua New Guinea.

I therefore consider that releasing the information marked using the 's. 33(a)(iii)' redaction would adversely impact the Department's good working relations with the governments of Nauru and Papua New Guinea.

In forming that opinion I have also paid regard to the nature and importance of the broader bilateral relationships. Papua New Guinea is Australia's closest neighbour. Australia is the key economic and security partner of both Papua New Guinea and Nauru.

7.2 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 with the 's. 47E(d)' redaction would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

The information in question reveals the performance of companies engaged by the Department to provide services in Manus and Nauru. A number of the companies in question continue to be contracted by the Department. The disclosure of allegations about contractor employees would damage the reputation of these companies and have a negative impact on the relationship between the contractors and the Department. The release of the material would adversely impact the Department's capacity to provide ongoing support to the governments of Nauru and Papua New Guinea.

Accordingly, I have decided that the documents 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 section 7.4 below.

7.3 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 s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's. 47F' in the documents would disclose personal information relating to third parties. The personal information in question is:

- information identifying transferees and refugees currently or previously subject to regional processing, including information that reveals the involvement of some of these individuals in incidents
 - Most of the material in question includes the names and boat IDs of the individuals in question. Disclosure would therefore identify the individuals as transferees or refugees under regional processing arrangements.
 - Other material on pages 6 to 11 contains information about incidents in Nauru in which particular transferees and refugees were involved. This material would not directly identify the individuals involved in the incidents once the identifying information (names and boat IDs) is redacted. However, the material contains information about the particular incident that is specific enough that it would allow other people in Nauru to identify the person in question.
 - Further material on pages 6 to 11 reveals the nationality of transferees and refugees involved in incidents on Nauru. Given the low numbers of transferees and refugees from some countries, I considered that disclosing the nationality of transferees or refugees from these particular countries would result in identification of the individuals in question and associate them with being involved in assault incidents.
 - In the case of specific details of a sexual assault included on page 16, the information would increase the likelihood that the victim and the person who reported the incident would be identified among members of their community and would reveal that the transferee had reported the incident.
- information about the involvement of employees of contracted service providers in incidents, where the employee is potentially identifiable through their position title. While the information does not directly identify the individuals in question, I am of the opinion that the relatively low numbers of people employed in these roles in Nauru and Papua New Guinea, the other information in the documents and existing available information creates a risk that the combined effect of this information would result in the particular individuals being linked to the incidents in question.

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.*

In relation to the information about specific transferees and refugees contained on pages 24, 26, 34, 35, 38 and 39, I note that the information is available from publicly accessible sources and that the individuals in question are known to be associated with the matters

referred to in the documents. However, I note that the information in question was not released by the Department and instead reached the public domain by other means.

The Department has a longstanding policy not to comment publicly on the details of individual cases, regardless of whether details are already in the public domain. Release by the Department would constitute official Government confirmation of an individual's personal information, as well as officially identifying the person as a transferee or refugee. This approach would set a precedent for release of personal information, compromise privacy and potentially attract unsolicited media scrutiny on the individual. I therefore consider release of the identifying information to be unreasonable.

In relation to the other third party information throughout the documents in scope that is not available from publicly accessible sources, this information is not well known. The information would only be known to a limited group of people in the Department who have a business need to access the information. As this information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document.

In addition, I have also taken into account the sensitivity of the information, and note in the case of transferees and refugees, the disclosure of the information would confirm that:

- the individuals in question reside at a RPC
- they are likely to have made claims for protection
- they have been involved in critical incidents, including incidents involving assault and sexual assault
- some of the individuals are children.

In relation to the service provider employees, the information is also sensitive since it reveals the individuals' alleged involvement in incidents.

I am satisfied that the release of this information 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.

7.4 *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.
- In relation to the material that is conditionally exempt under section 47F of the FOI Act and that solely contains identifying information about third parties, I consider that this material does not have the character of public importance, since all it reveals is the identities of the individuals concerned. This information would be of interest to a very narrow section of the public.
- In relation to the material that is conditionally exempt under section 47F of the FOI Act and which reveals more detailed information about the involvement of third parties in critical incidents, I consider that the material reveals information about the conditions experienced by individuals subject to regional processing and that disclosure of the material would allow some form of debate into a matter of public importance. However I do not believe that disclosure would significantly advance the current debate given the nature of the information and the existence of other information already in the public domain.
- I consider that no insights into public expenditure will be provided through disclosure of the conditionally exempt material.
- 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:

- The 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 those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.
- The disclosure of the information which is conditionally exempt under section 47E(d) of the FOI Act could be reasonably be expected to prejudice the fair treatment of individuals who are employees of contracted service providers, and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.

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.

8 Reasons for decision: access to edited copies

8.1 Section 22 – access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act provides that an agency must provide access to an edited copy of a document when:

- the agency has identified that a document is exempt or contains irrelevant material, and
- it is possible for the agency to prepare an edited copy of the document from which it has deleted the exempt or irrelevant material.

As I have explained above, I have determined that one or more documents within the scope of this request are exempt documents, for the reasons I have stated in the Exemptions section above. Other documents contain material that is irrelevant to your request.

I have also determined that I am able to prepare edited copies of these documents by redacting the exempt and irrelevant material. I am therefore releasing to you edited copies of these documents as is required under section 22(2) of the Act. I have indicated in the attached schedule those documents that I have released in edited form.

9 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.

10 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>.

11 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.

12 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**

ATTACHMENT A

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

FOI request: FA 16/05/00772

File Number: ADF2016/20066

Document number	Page number in consolidated documents	Description	Decision	
1	1-2	Brief No. BP16-XX.X: disturbances and incidents – Nauru	Released edited copy – exempt in part	s. 33(a)(iii)
1	3	Brief No. BP16-XX.X: disturbances and incidents – Nauru	Released in full	
1	4	Brief No. BP16-XX.X: disturbances and incidents – Nauru	Released edited copy – exempt in part	s. 33(a)(iii)
1	5	Brief No. BP16-XX.X: disturbances and incidents – Nauru	Released edited copy – irrelevant in part	s. 22(1)(a)(ii)
1	6	Brief No. BP16-XX.X: disturbances and incidents – Nauru (Attachment A)	Released edited copy – exempt in part	s. 33(a)(iii) s. 47F
1	7	Brief No. BP16-XX.X: disturbances and incidents – Nauru (Attachment A)	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47F s. 22(1)(a)(ii)
1	8-11	Brief No. BP16-XX.X: disturbances and incidents – Nauru (Attachment A)	Released edited copy – exempt in part	s. 33(a)(iii) s. 47F
2	12-13	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea	Released in full	
2	14	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea	Released edited copy – irrelevant in part	s. 22(1)(a)(ii)
2	15	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea (Attachment A: Sexual assault incidents involving transferees in the Manus Regional Processing Centre)	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47F s. 22(1)(a)(ii)
2	16	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea (Attachment A)	Released edited copy – exempt in part	s. 33(a)(iii) s. 47E(d) s. 47F
2	17	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea (Attachment A)	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47E(d) s. 47F s. 22(1)(a)(ii)
2	18-19	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea (Attachment A)	Released edited copy – irrelevant in part	s. 22(1)(a)(ii)
2	20	Brief No. BP16-XX.X: disturbances and incidents – Papua New Guinea (Attachment B: Assault incidents involving refugees at the East Lorengau Refugee Transit Centre)	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 22(1)(a)(ii)
3	21-22	Nauru: recent self-harming behaviour among former Unaccompanied Minors (UAMs)	Released edited copy – exempt in part	s. 33(a)(iii) s. 47F

Document number	Page number in consolidated documents	Description	Decision	
3	23	Nauru: recent self-harming behaviour among former Unaccompanied Minors (UAMs)	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47F s. 22(1)(a)(ii)
4	24	Overview of individuals case briefing	Released edited copy – exempt in part	s. 33(a)(iii) s. 47F
4	25	Family reunification in Australia – separation due to medical transfer	Released edited copy – exempt in part	s. 47F
4	26	Family reunification in Australia – separation due to medical transfer	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47F s. 22(1)(a)(ii)
4	27	Individual cases	Released edited copy – exempt in part	s. 33(a)(iii) s. 47F
4	28	Individual cases	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47F s. 22(1)(a)(ii)
4	29-33	Nauru individual cases	Released edited copy – exempt and irrelevant in part	s. 33(a)(iii) s. 47F s. 22(1)(a)(ii)
4	34	Individual cases	Released edited copy – exempt and irrelevant in part	s. 47F s. 22(1)(a)(ii)
4	35	Cambodia refugee settlement programme – case updates	Released edited copy – exempt in part	s. 47F
4	36	Cambodia refugee settlement programme – case updates	Released edited copy – irrelevant in part	s. 22(1)(a)(ii)
4	37	Current events in Nauru and departmental response	Released edited copy – exempt in part	s. 33(a)(iii)
4	38	Current events in Nauru and departmental response	Released edited copy – exempt in part	s. 47F
4	39	Current events in Nauru and departmental response	Released edited copy – exempt and irrelevant in part	s. 47F s. 22(1)(a)(ii)