



29 March 2018

In reply please quote:

FOI Request: FA 17/12/00794; ADF2017/136216

Information Commissioner reference: [REDACTED]

Mr [REDACTED]

By email: [REDACTED]

Dear [REDACTED]

Freedom of Information request – Access Decision

This letter refers to your request received on 20 October 2016, seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

All correspondence to and from the departmental secretary managing the Nauru files review from October 20 to the date the review was finalised in 2017.

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 information relevant to the request and to a similar request lodged by you
- 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 which you sought access to
- the Department's guidance material on the FOI Act.

Decision and reasons

The Department has located two documents relevant to the scope of your request. I have decided to release the two documents in part with exemptions, in accordance with s.47F [Personal information] of the FOI Act.

Conditional exemption- personal information - s.47F(1)

A document is 'conditionally exempt' under s.47F(1) of the FOI Act if its release would involve the 'unreasonable disclosure of personal information about any person, including a deceased person'.

For information or documents to be exempt under this provision, the information in the documents must meet the definition of 'personal information' under s.4(1) of the FOI Act and I must therefore be satisfied that the release of the information is 'unreasonable'. The test of unreasonableness implies a need to balance the public interest in disclosure of government-held information and private interests of individuals.

Personal Information

I am satisfied that the information contained in the documents which I am exempting is the 'personal information' of the individuals concerned. The 'personal information' includes the names and contact details of third parties.

Unreasonable disclosure

Section 47F(2) of the FOI Act sets out the factors that may be considered when determining whether release is 'unreasonable'. They are:

- 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 within the document
- the availability of the information from publicly accessible sources, and
- any other matters that the Department considers relevant.

I have considered each of these factors below.

The extent to which the information is well known

The third parties' personal information is not well known and would only be known to a limited group of officers with a business need-to-know. The information would not necessarily be known outside the Department. On balance, I believe that this factor weighs against the release being reasonable.

Whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document

The third parties' personal information, in the context of the documents, is only known to those with a business need-to-know. Therefore, the individuals concerned are not generally known to be associated with the matters discussed in the document. On balance, I believe that this factor weighs against the release being reasonable.

The availability of the information from publicly accessible sources

This personal information is not available from publicly available sources and does not appear to be in the public forum. The information is contained in internal departmental documents, created for an administrative process. On balance, I believe that this factor weighs against the release being reasonable.

Any other matters that the department considers relevant

I have considered the following factors:

- The information is not your personal information. This weighs against the release being reasonable.

- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- No purpose would be achieved by releasing the third party personal information. This weighs against the release being reasonable
- The degree to which release of the personal information would contribute to a public purpose being achieved, or to shed light on the workings of government. This weighs against the release being reasonable, and
- The current relevance of the personal information. This weighs against the release being reasonable.

On balance I am satisfied that the release of the third party personal information would be 'unreasonable' in the context of the request.

Therefore, I am satisfied that the conditional exemption in s.47F(1) applies to the documents. I must now consider the application of the public interest test in s.11B of the FOI Act to determine whether the release of the information in the documents would be 'contrary to the public interest'.

Factors in favour of disclosure

Although release of the third parties' personal information would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information. Therefore, only the first public interest factor weighs in favour of release.

Factors against disclosure

I consider that these factors are relevant to the personal information in the identified documents:

- disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy
- it is a core Government concern to maintain the integrity of the information it holds and to maintain an individual's privacy
- no purpose would be achieved nor served by releasing the third parties' personal information
- release would not contribute to a public purpose being achieved and/or shed light on the working of government, and
- the current relevance of the information.

On balance, I am satisfied that release of the third parties' personal information would be 'contrary to the public interest' and is therefore exempt under s.47F(1) of the Act. The factor against disclosure relating to the protection of an individual's right to privacy was given the most weight. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding this information.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department of my 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 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:

Freedom of Information Reviews Officer
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi.reviews@homeaffairs.gov.au

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at www.oaic.gov.au.

How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

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.

Information Commissioner

As this request also relates to an Information Commissioner review which you are seeking, a copy of this decision has also been provided to the OAIC. Please confirm with the OAIC if you wish to now withdraw your Information Commissioner review relevant to this matter. The Information Commissioner reference is [REDACTED]

Yours sincerely

[REDACTED]
[REDACTED]
[REDACTED]
Authorised decision maker
Department of Home Affairs
Email: foi@homeaffairs.gov.au

Attachments

Attachment A - Documents released.