



11 April 2019

In reply please quote:

FOI Request: FA 18/09/00661

File Number: ADF2018/19303

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 12 September 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:

- 1) *Emails between [REDACTED] and any ABF employees on 12-14 June 2018*
- 2) *Emails between [REDACTED] on 12-14 June 2018*
- 3) *Emails between [REDACTED] on 12-14 June 2018 and*
- 4) *Emails sent or received by [REDACTED] on 12-14 June 2018 in relation to transfers of people from Nauru for health purposes.*

On 29 October 2018, the Department issued a notice of practical refusal reasons under section 24AB of the FOI Act.

On 9 November 2018, you indicated you would like to narrow the scope of the request to include only emails addressed directly to the people named in your request, and that the subject matter of the email should be limited to those that related to the possible transfers of people from Nauru for health purposes.

On 16 November 2018, you agreed that multiple version of the same email chains can be limited to the final version contain all previous emails.

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 47 documents as falling within the scope of your request. These documents were in the possession of the Department on 12 September 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 45 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 – 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 September 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.

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 42 of the FOI Act – Legal Professional Privilege

Section 42 of the FOI Act provided that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that documents 3 and 38 and parts of documents 1, 2, 39, 40 and 47 comprise confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of these documents are not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege.

I have therefore decided that information marked 's42' either in the documents themselves or in the schedule, is exempt from disclosure under section 42 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 the 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.

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

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

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 individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I have also had regard to the fact that the personal information contained in these documents is health information, and that this type of information is regarded as sensitive personal information for the purposes of the *Privacy Act 1988*. I consider this to be an important factor when considering whether disclosure of the information to you would be unreasonable.

I am satisfied that the disclosure of the information within the documents 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 not seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- 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.

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

- disclosure of the operational email addresses which are conditionally exempt under **section 47E(d)** of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. The Department has established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department are able to carry out their functions in an effective matter. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure of the exempt information.

- 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. I note in particular that section 6 of the Privacy Act 1988 defines *sensitive information* to include health information about an individual.
- 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 non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.

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 would be contrary to the public interest and it is 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

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**

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 18/09/00661

	Date of document	No. of pages	Description	Decision on release	
1.	12/06/2018 13:22	16	Email	Release in part	22(1)(a)(ii) 42 47E(d) 47F
2.	14/06/2018 12:33	9	Email	Release in part	22(1)(a)(ii) 42 47E(d) 47F
3.	14/06/2018 21:07	7	Email	Exempt in full	22(1)(a)(ii) 42 47E(d) 47F
4.	12/06/2018 13:51	4	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
5.	12/06/2018 16:26	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
6.	12/06/2018 20:13	6	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
7.	12/06/2018 17:15	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
8.	12/06/2018 18:52	4	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
9.	13/06/2018 11:29	6	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
10.	13/06/2018 11:30	6	Email	Release in part	22(1)(a)(ii) 47E(d)
11.	13/06/2018 16:39	7	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
12.	12/06/2018 18:59	6	Email	Release in part	22(1)(a)(ii) 47E(d) 47F

	Date of document	No. of pages	Description	Decision on release	
13.	12/06/2018 19:42	7	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
14.	12/06/2018 19:59	8	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
15.	12/06/2018 19:03	4	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
16.	13/06/2018 15:38	1	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
17.	13/06/2018 22:11	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
18.	13/06/2018 06:06	5	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
19.	13/06/2018 11:54	11	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
20.	13/06/2018 12:58	12	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
21.	13/06/2018 13:00	12	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
22.	13/06/2018 13:15	13	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
23.	13/06/2018 21:04	5	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
24.	14/06/2018 08:51	8	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
25.	14/06/2018 10:18	4	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
26.	13/06/2018 06:30	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F

	Date of document	No. of pages	Description	Decision on release	
27.	13/06/2018 08:55	6	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
28.	13/06/2018 16:44	4	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
29.	13/06/2018 21:44	1	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
30.	14/06/2018 03:47	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
31.	14/06/2018 06:33	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
32.	14/06/2018 08:26	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
33.	14/06/2018 08:39	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
34.	14/06/2018 11:29	4	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
35.	14/06/2018 14:21	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
36.	14/06/2018 14:37	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
37.	12/06/2018 17:34	5	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
38.	13/06/2018 07:37	5	Email	Exempt in full	22(1)(a)(ii) 42 47E(d) 47F
39.	13/06/2018 10:30	6	Email	Release in part	22(1)(a)(ii) 42 47E(d) 47F

	Date of document	No. of pages	Description	Decision on release	
40.	13/06/2018 07:49	10	Email	Release in part	22(1)(a)(ii) 42 47E(d) 47F
41.	13/06/2018 0858	21	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
42.	13/06/2018 17:44	1	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
43.	13/06/2018 21:04	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
44.	14/06/2018 09:10	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
45.	14/06/2018 09:37	3	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
46.	13/06/2018 10:56	2	Email	Release in part	22(1)(a)(ii) 47E(d) 47F
47.	14/06/2018 18:53	3	Email	Release in part	22(1)(a)(ii) 42 47E(d) 47F