



11 April 2019

In reply please quote:

FOI Request: FA 19/01/00423

File Number: ADF2019/43586

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 11 January 2019, 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:

The policy document referred to in the Minutes of the Transitory Persons Committee meeting held on 20 June 2018 and any policy documents which preceded that policy document and any policy documents which have superseded that policy document.

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)

4 Documents in scope of request

The Department has identified three documents as falling within the scope of your request. These documents consist of:

- 1) *Health Care in Regional Processing Countries dated 11 April 2018*
- 2) *Health Care in Regional Processing Countries dated 6 June 2018*
- 3) *Health Care in Regional Processing Countries dated 10 December 2019*

These documents were in the possession of the Department on 11 January 2019 when your request was received.

In relation to the policy document dated 6 June 2018, this document has previously been released by the Department under the FOI Act. As such, I have not reconsidered the release of that document. I refer you to the copy of the document published in the Department's FOI disclosure log [here](#).

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is to release two documents in part with deletions.

6 Reasons for Decision

Detailed reasons for my decision are set out below. My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 **Section 33 of the FOI Act – Documents affecting National Security, Defence or 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 documents relates to regional processing arrangements in Nauru and Papua New Guinea. The Republic of Nauru and Papua New Guinea are sovereign nations responsible for regional processing in their countries.

I consider that the release of the information marked 's33(a)(iii)' would adversely impact the ability of the Department to maintain good working relations with those foreign Governments. This assessment is made considering the nature of the information contained within the documents and the current nature and extent of the Australian Government's relationship with the Government of Nauru and the Government of Papua New Guinea.

As such I have decided that the information marked 's33(a)(iii)' is exempt from disclosure under section 33(a)(iii) of the FOI Act.

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.

The Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia was agreed on a confidential basis. I am satisfied that the information relating to that MoU so far as it is contained within the document subject to this request, was communicated in confidence by or on behalf of another government, and was received by the Australian Government under an understanding of confidentiality. There was clear general understanding between the relevant parties that the MoU would be treated in confidence.

As such, I have decided that the release of the document would divulge information communicated in confidence by or on behalf of a foreign government to the Commonwealth of Australia and I have decided that the document is exempt from disclosure under section 33(b) of the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. 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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

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