



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/05/00460
File Number ADF2015/18689

Scope of request

I seek access to documents/ correspondence related to Nauru's internet and social media restrictions including any requests or input Australia had made into the decision. (But excluding any requests for comment from journalists.)

Documents in scope

1. Departmental document (email-trail) – containing 4 folios.
2. Departmental document (email-trail) – containing 3 folios
3. Departmental document (email-trail) – containing 3 folios
4. Departmental document (email-trail) – containing 3 folios

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 *Freedom of Information Act 1982*;
- Departmental documents (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government; and
- Comments made by officials representing the Nauruan Government.

Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of exempt or irrelevant material under s.22 of the Act

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

Deletion of irrelevant material as applied to your FOI request

The documents contain information which is considered irrelevant to your request. Irrelevant information includes the names and direct contact details of Departmental staff below senior executive level.

Conditionally exempt documents

The documents I have considered fall under a 'conditional' exemption in the FOI Act.

I will explain what a 'conditionally exempt' document is before discussing the individual exemption I have applied.

The FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

The public interest test

Factors weighing in favour of release

In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the information would:

- (a) promote the objects of the Act; or*
- (b) inform debate on a matter of public importance; or*
- (c) promote effective oversight of public expenditure; or*
- (d) allow a person to access his or her personal information.*

The objects of the FOI Act, set out in s.3(1), are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines (IC Guidelines) that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the FOI Act).

The Information Commissioner has since issued Guidelines that contain a **non-exhaustive** list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the IC Guidelines).

The elements that weigh against disclosure are:

Whether disclosure of the personal information could reasonably be expected to:

- (a) *prejudice the protection of an individual's right to privacy, including where:*
 - i. *the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*
 - ii. *the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) *prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
- (c) *prejudice security, law enforcement, public health or public safety*
- (d) *impede the administration of justice generally, including procedural fairness*
- (e) *impede the administration of justice for an individual*
- (f) *impede the protection of the environment*
- (g) *impede the flow of information to the police or another law enforcement or regulatory agency*
- (h) *prejudice an agency's ability to obtain confidential information*
- (i) *prejudice an agency's ability to obtain similar information in the future*
- (j) *prejudice the competitive commercial activities of an agency*
- (k) *harm the interests of an individual or group of individuals*
- (l) *prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
- (m) *prejudice the management function of an agency*
- (n) *prejudice the effectiveness of testing or auditing procedures*

I will now consider each conditional exemption that I have applied in my decision.

Conditional Exemptions as applied to your request

Public interest 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' in s.4(1) of the FOI Act and I must 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 direct contact details (email addresses) of third parties, including officials from the Government of Nauru.

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 publically 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 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 emails, 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 publically accessible sources

This personal information is not available from publically 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 would contribute to a public purpose being achieved and/or shed light on the working of government. This weighs against the release being reasonable.
- The current relevance of the 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 weighing in favour of release

I am satisfied that the release of the documents would promote the objects of the FOI Act as it would provide access to information held by Government and that this factor weighs in favour of the release not being 'contrary to the public interest'.

However, I am satisfied that the release of the third parties' personal information contained in the relevant documents would not have any bearing on or relevance to any matter of public debate. Therefore this factor does not weigh in favour of release.

I am also satisfied that the release of the personal information is irrelevant to the effective oversight of public expenditure. Therefore, this factor does not weigh in favour of release.

Finally, the release of the documents containing the third parties' personal information would not allow you to access your own information. This factor does not weigh in favour of release.

Factors weighing against release

As set out above, the Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act.

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

- disclosure of the third parties' personal information could reasonably be expected to prejudice the protection of the individuals' right to privacy;
- it is a core Government concern to maintain an individual's privacy;
- no purpose would be achieved/served by releasing the third parties' personal information;
- disclosure of Nauruan Government officials' personal information could reasonably be expected to prejudice the Department's relationship with the Government of Nauru; 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 FOI 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.


Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

February 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/05/00460
File Number ADF2015/18689

1. Departmental Document

Folio	Description	Decision	Legislation
1-4	Email trail dated 5 May 2015	Exempt in part	s.47F(1)
		Irrelevant to scope	s.22(1)(a)(ii)

2. Departmental Document

Folio	Description	Decision	Legislation
1-3	Email trail dated 5 May 2015	Exempt in part	s.47F(1)
		Irrelevant to scope	s.22(1)(a)(ii)

3. Departmental Document

Folio	Description	Decision	Legislation
1-3	Email trail dated 5 May 2015	Exempt in part	s.47F(1)
		Irrelevant to scope	s.22(1)(a)(ii)

4. Departmental Document

Folio	Description	Decision	Legislation
1-3	Email trail dated 5 May 2015	Exempt in part	s.47F(1)
		Irrelevant to scope	s.22(1)(a)(ii)

Attachment C – Extract of relevant legislation

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or

body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) 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;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of *qualified person* in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).