



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/10/01625
File Number ADF2015/59599

Scope of request

1) *Correspondence between the Minister and/or any representative of the Department of Immigration and Border Protection and:*

- Mr [REDACTED] associate editor of *The Australian* newspaper;
- Any staff member or representative of *The Australian* newspaper;
- Any staff member or representative of *News Corp Australia*;
- Any member or representative of the government of the state of *Nauru*;
- Any employee or representative of *Transfield Services*;
- Any employee or representative of *Mercer PR*.

Regarding:

- The case of the refugee known in the media as "Abyan" who was transferred to Australia in October, 2015, for a termination of her pregnancy;
- Provision or procurement of an appropriate visa for a visit by Mr [REDACTED] or any other journalist from *The Australian* to *Nauru*.

2) *Correspondence between the Minister and/or any representative of the Department of Immigration and Border Protection and:*

- Any other Australian government minister or representative of any other Australian government department.

Regarding:

- Provision or procurement of an appropriate visa for a visit by Mr [REDACTED] or any other journalist from *The Australian* to *Nauru*.

Documents in scope

1. The Department identified two documents as being within scope of the request.

Authority to make decision

2. 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

3. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - Departmental files and/or documents (identified above); and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

4. 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.
5. 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 reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).
6. 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.

Deletion of exempt material under s.22(1)(a)(i) of the FOI Act

7. The Schedule of Documents (Attachment B) and the document released (Attachment D) detail the exemptions that have been applied. Exemptions were applied on the following grounds:

Section 33 - documents affecting national security, defence or international relations

8. Section 33(a) 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 security, defence or international relations of the Commonwealth.
9. I find that there are real and substantial grounds for expecting that the disclosure of the parts of Document 2 exempted under 33(a)(iii) would cause damage to the international relations of the Commonwealth.
10. The material exempted under section 33(a)(iii) would cause damage to the bilateral relationship which the Department and the Australian Border Force enjoy with colleagues from a foreign government.
11. I consider that disclosure of the exempt information would also reasonably be expected to diminish the trust and confidence which the other country has in Australia as a reliable recipient of confidential information and may make the foreign country less willing to cooperate with the Department and the Australian Border Force in the future.
12. Accordingly, I have decided to exempt parts of Document 2 under section 33(a)(iii) of the FOI Act.

Section 47F – personal privacy

13. Section 47F(1) of the Act provides:

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).

The relevant documents contain 'personal information'

14. I am satisfied that the documents to which you have sought access contain 'personal information', being the names and other identifying information of Government of Nauru officials, and personal information regarding the refugee known as 'Abyan'.

Disclosure would involve the 'unreasonable disclosure of personal information'

15. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.

16. These factors are:

- 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; and
- d) any other matters that the agency or Minister considers relevant.

17. The exempted information is not well known outside of a small number of personnel within the Department of Immigration and Border Protection, its service providers on Nauru and the Republic of Nauru Government, and is not provided in publicly available documentation.

18. As such, I consider that disclosure of the personal information in the document would be unreasonable.

Application of the 'public interest' test

19. While I have found that the conditional exemption in section 47F(1) of the FOI Act applies to the information outlined in paragraph 9 above, section 11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.

20. In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which point in favour of release. These factors are:

- a) whether release would promote the objects of the FOI Act;
- b) whether release would inform debate on a matter of public importance;
- c) whether release would promote effective oversight of public expenditure; and
- d) whether release would allow a person to access his or her own personal information.

21. While I acknowledge that release of the document will promote the objects of facilitating and promoting public access to information, I consider that the release of individual identifying information of Government of Nauru officials and Abyan, as well as private information about Abyan's personal history (which is not in the public domain), would make a negligible further contribution to public debate.
22. In contrast, I consider that the protection of the individual's right to privacy should be given the upmost importance.
23. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the document is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under section 47F of the FOI Act.

Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act

24. I find that the document relevant to your request contains some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the document released.
25. The material deleted under section 22(1)(a)(ii) comprises the names and contact details of Departmental non-Senior Executive Service staff, and the direct telephone numbers of Departmental Senior Executive Service staff.
26. The intended deletion of this material was advised to you by email on 29 October 2015 and you were advised to contact the Department should you require this information. You did not subsequently advise the Department that you required this information.
27. Information related to the forwarding and/or printing of the documents for the purpose of processing the FOI request have also been deleted as irrelevant material.



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

1 March 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/10/01625
File Number ADF2015/59599

No.	Date of document	Pages	Description	Decision on release	Exemption
1.	19/10/2015	1-5	Email correspondence	Released in part	s.47F(1)
2.	20/10/2015	6-7	Email correspondence	Released in part	s.33(a)(iii) s.47F(1)

Attachment C – Extract of relevant legislation (FOI Act)

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or

- (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include 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.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (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.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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.

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).

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).