



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/10/00975
File Number ADF2015/57710

Scope of request

1. On 26 September 2015 you requested:

... the mail and parcel registers maintained by Transfield for the Nauru and Manus regional processing centres, for the period of: April 2014, October 2014, November 2014, and December 2014.

Documents in scope

2. Four documents, comprising 73 pages, were identified as being in scope. These documents are detailed at [Attachment B](#) – Schedule of Documents.

Authority to make decision

3. 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

4. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - The Australian Information Commissioner's Guidelines relating to access to documents held by government;
 - Departmental documents (identified above); and
 - Correspondence from *Broadspectrum Limited*, the relevant Service Provider at the Regional Processing Centres.

Background Information

Nauru RPC Mail Logs

5. *Document 1* contains copies of the paper-based registers of mail received at the Nauru RPC for the months of October, November and December 2014. Broadspectrum advises that its subcontracted provider, Wilson Security, has been unable to locate the paper-based mail register for April 2014.

6. *Document 3* was extracted from Wilson Security's IT records management system. It includes 'all mail received and documented in [the system] for October 2014, November 2014 and December 2014'. This system was not used by the Nauru RPC Property Department during April 2014.

Manus RPC Mail Logs

7. *Document 2* was extracted from Wilson Security's IT records management system and 'includes all mail received and documented in the system for April 2014, October 2014, November 2014 and December 2014'. Broadspectrum advises that as the Manus Property Department was transitioning to Wilson Security during April 2014, not all mail received in that month was recorded in the records management system.
8. *Document 4* – Broadspectrum advises that this is 'a more accurate depiction of all mail received at the Manus Island RPC, sent by Mr Burnside'.

Reasons for decision

9. 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.
10. 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).
11. 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

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

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 names, signatures, boat identity numbers and passport numbers of persons held at the Nauru and Manus Regional Processing Centres.

Disclosure would involve the 'unreasonable disclosure of personal information'

15. In assessing whether a particular disclosure would be 'unreasonable', s.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. I acknowledge your advice that you already hold the boat identity numbers and names of the persons to whom the letters were addressed. The Department is not aware of officially disclosing this information to the public.
18. I note your request that the Department provide you with the boat identity numbers as contained in the documents, as this will help you to match the Department's information with yours and to determine what occurred with the letters sent as part of a letter writing campaign. I further note your advice that should the Department release the boat identity numbers to you, the information would remain private (your email to the Department of 9 February 2016 refers).
19. While I accept that the boat identity numbers are known to you, and I note your assurances that such information would be kept private if included in the documents released to you, I nonetheless consider it unreasonable to disclose such information to you.
20. Firstly, the Department is unaware of which letters in Documents 1, 2 and 3 were sent as part of the letter writing campaign. Releasing the boat identity numbers in those documents would reveal personal information about all mail recipients listed on the registers, including those not sent letters as part of the campaign.
21. Secondly, even if the Department were able to identify and release only those boat numbers for those individuals who were sent letters as part of the letter writing campaign, release of such information would enable you to attribute other personal information to the individuals identified, such as whether they were located at the RPC at the time the service provider attempted to deliver the mail, whether the individual accepted or declined to receive the mail, and what other items were delivered to the person. This finding is relevant to Documents 1, 2, 3 and 4.
22. I therefore find that the conditional exemption in s.47F(1) of the FOI Act applies to the information outlined above.

Application of the 'public interest' test

23. Although I have found that the boat identity numbers of mail addressees/recipients at the Nauru and Manus RPCs is conditionally exempt from release under s.47F(1), 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.

24. The factors favouring access to information are provided at s.11B of the FOI Act:

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.*

25. I am satisfied that the release of the information would promote the objects of the FOI Act as it would provide access to information held by Government.

26. I acknowledge that release of the information would help inform debate on a matter of some public importance and interest, being whether genuine efforts were made to deliver mail sent by community members to those individuals located at the Nauru and Manus RPCs.

27. I do not consider release of the information would promote effective oversight of public expenditure or allow a person to access his or her own personal information.

Factors weighing against release

28. Release of the information would compromise individuals' privacy for the reasons described at paragraphs 20-21.

29. I consider that the protection of an individual's right to privacy should be given the upmost importance and on balance, I am satisfied that release of the third parties' personal information would be 'contrary to the public interest' and this information is therefore exempt under s.47F(1) of the FOI Act.

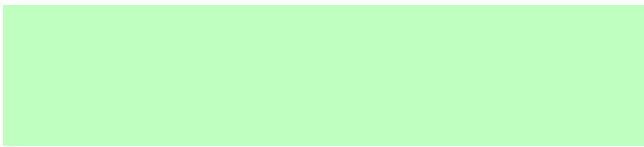
Section 24A(1) – document lost or non-existent

30. One document, the paper-based mail register for Nauru RPC for April 2014, was identified as being within the scope of the request but could not be located by Broadspectrum/its subcontracted provider.

31. I am therefore satisfied that the document is lost and therefore exempt the document under s.24A(1) of the FOI Act.

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

32. The documents contain information which is considered irrelevant to your request. Irrelevant information includes the names, initials and/or signatures of Departmental (including Service Provider) staff below senior executive level.



Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au
17 May 2016

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/10/00975

File Number ADF2015/57710

Document	Folio	Description	Decision	Legislation (FOI Act)
1	1-23	Nauru Regional Processing Centre - Property Mail and Parcel Register (October to December 2014)	Exempt in part Irrelevant to scope	s.47F(1) s.22(1)(a)(ii)
2	24-25	Manus Regional Processing Centre - Mail Register (April, October, November and December 2014)	Exempt in part Irrelevant to scope	s.47F(1) s.22(1)(a)(ii)
3	26-56	Nauru Regional Processing Centre - Mail Register (October to December 2014)	Exempt in part Irrelevant to scope	s.47F(1) s.22(1)(a)(ii)
4	57-73	Julian Burnside Letter Register - (October to December 2014, May to June 2015)	Exempt in part	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.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

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).