



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 15/11/00391  
File Number ADF2015/60909

#### Scope of request

I wish to make an application under the Commonwealth Freedom of Information Act 1982 (the Act) for documents held by the Department of Immigration and Border Protection regarding the alleged rape case on Nauru of Somali refugee, *client name*, which occurred on August 21, 2015.

Specifically, I seek access to:

1. Incident reports and/or similar field reports regarding the alleged rape.
2. Incident reports and/or similar field reports about *client name* compiled by the Settlement Service Provider and provided to DIBP, between August 20 and October 30.
3. Official diary notes between and including August 21 and 26, 2015 by any DIBP staff on Nauru who saw *client name* between and including those dates.
4. Official diary notes, and/or other documents compiled by DIBP staff during and after a meeting with *client name* held on October 28, 2015.
5. Executive level briefings in DIBP, and/or to Members of Parliament regarding *client name*, also known as 'Najma'.
6. Internal correspondence between August 21 and October 30 regarding the alleged rape of *client name*.

#### 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 terms of your request
- the *Freedom of Information Act 1982*;
- the Australian Information Commissioner's guidelines relating to access to documents held by government
- Departmental documents, identified in the Schedule of Documents; and
- consultations with relevant business area/s.

### **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.

### **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 10 November 2015, 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.

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

I have therefore decided that parts of the documents 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 s.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.

### **Section 47F(1) – Personal Privacy**

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'.

I am satisfied that the documents to which you have sought access contain 'personal information', being the names and identifying information of third parties. The documents also contain information which, while not itself personal identifying information, could be used to identify these individuals. The documents also contain first-hand accounts of incidents that, if released, would reasonably be expected to cause the alleged victim personal embarrassment and difficulty.

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

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.

The personal information in the document is not freely or broadly available in the public domain and not well known. As such, I consider that disclosure of the personal information in the document would be unreasonable.

**Application of the 'public interest' test**

Although I have found that the information contained in the document you requested 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 not consider whether disclosure would be contrary to the public interest.

I acknowledge that release of the document without the exemptions made under s.47F(1) would promote the objects of the FOI Act, through facilitating and promoting public access to information. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.

In contrast, I consider that it is in the broader public interest for individuals to be able to entrust the Department with their personal details, particularly where they are alleged victims of the incidents described in the documents.

Taking into account the above matters, on balance, I consider that disclosure of the information in the document exempted under s.47F(1) to be contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47F(1) of the FOI Act. The exemption has therefore been applied to the documents released.



Authorised decision maker  
Department of Immigration and Border Protection

Email            [foi@border.gov.au](mailto:foi@border.gov.au)

22/07/2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/11/00391  
File Number ADF2015/60909

No.	Date of document	No. of pages	Description	Decision on release
1.	22/08/2015	2	Incident Report	Exempt in Part s.22(1)(a)(ii) s.47F(1)
2.	21/08/2015	2	Incident Report	Exempt in Part s.22(1)(a)(ii) s.47F(1)
3.	-	5	Incident case notes	Exempt in Part s.22(1)(a)(ii) s.47F(1)
4.	-	3	Detailed Incident Report	Exempt in Part s.22(1)(a)(ii) s.47F(1)
5.	23/10/2015	10	Email Correspondence	Exempt in Part s.22(1)(a)(ii) s.47F(1)
6.	28/10/2015	5	Email Correspondence	Exempt in Part s.22(1)(a)(ii) s.47F(1)
7.	27/10/2015	2	Email Correspondence	Exempt in Part s.22(1)(a)(ii) s.47F(1)
8.	30/10/2015	3	Email Correspondence	Exempt in Part s.22(1)(a)(ii) s.47F(1)
9.	October 2015	1	Briefing for Supplementary Estimates	Exempt in Part s.47F(1)

## 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.

#### 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).