



Australian Government

Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA 14/08/01418

File Number ADF2014/31065

Scope of request

Statistics on the number of torture and trauma incident reports concerning illegal maritime arrivals between 23rd July and 23rd August 2014.

Clarification of scope by applicant via email on 12 September:

The number of individuals who have advised the department they have been subject to torture and trauma prior to their arrival in Australia... in reference to the number of torture and trauma reports notified to the Department within the specified dates.

Documents in scope

1. Torture and Trauma Disclosures – July 2014 (Nauru RPC) – containing 1 folio.
2. Torture and Trauma Disclosures – July 2014 (Manus RPC) – containing 1 folio.

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);
- Consultation with relevant business areas; and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

I have considered the documents 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 FOI 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.

I am of the view that information I have deleted under s.22(1)(a)(i) is irrelevant to the scope of your request. I note you have sought access to statistics however the department has been unable to produce a statistical report. Rather the information being released to you identifies the dates of incidents reported and therefore will go towards providing you with the information it is you seek. All other content within the document is not subject to your request and I consider that had it been within the scope of your request I would have been required to consider an exemption under s.47F(1).

Please note that I have applied this exemption to parts of the documents.

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)*. I am satisfied the documents falling within the scope of your request contain personal information of third parties.

The exemption in s.47F(1) of the FOI Act applied if I am satisfied that the release of information would involve the *unreasonable* disclosure of third parties personal information. The FOI Act states that when deciding whether the disclosure of personal information would be *unreasonable* I *must* have regard to the factors set out in s.47F(2), being:

- (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 available resources;
- (d) any other matters that I consider relevant.

I have considered each of these elements separately below.

(a) Extent to which the information is known

The document is an internal departmental report and has not been publicly released.

(b) Whether the person to whom the information relates is known to be associated with the matters in the document.

The identity of the individuals relating to the subject matter is not publicly known. Their personal details in connection to the subject matter have not been previously released.

(c) The availability of the information from publicly available sources

The content of the documents is not in the public domain.

(d) Any other matters that the agency considers relevant

- The information is not your personal information
- Every person has the right to expect that their personal information will be securely maintained by the department.
- Whether the personal information; on its own; or in connection with other information already known to other persons, amount to the individual being identified.

After considering each element in s.47F(2), I am satisfied that disclosure of the personal information would be *unreasonable*.

Therefore, I am satisfied that the personal information I have identified in the relevant documents is *conditionally exempt* under s.47F(1) of the FOI Act. A *conditionally exempt* document **must** be released under the FOI Act unless the release would be *contrary to the public interest*. As a result, I must now consider the factors set out in the public interest test in s.11B(3) of the FOI Act.

Factors favouring disclosure

While release would promote the objects of the FOI Act, I do not consider that the release of the third party personal information contained within these documents would add to, nor inform debate on, a matter of public importance.

Factors weighing against disclosure

The OAIC has issued guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act. However, I note that this list is not exhaustive and I may consider any other relevant factors.

I consider that these factors are relevant to the documents in question:

- prejudice the protection of an individual's right to privacy
- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy
- prejudice the fair treatment of individuals

The information contained within the documents, wholly relates to a person other than you. The department is obliged to take action to prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight.

On balance, I am satisfied that the disclosure of the information would amount to an unreasonable disclosure of personal information. Further, I am satisfied that the release of the personal information in the documents would be contrary to the public interest. Therefore, I am satisfied that the personal information in the documents is exempt from release under section 47F(1) of the FOI Act.



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4 December 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/08/01418

File Number ADF2014/31065

1. Torture and Trauma Disclosures – July 2014 (Nauru RPC)

Folio	Description	Decision	Legislation
1	Information or material that is irrelevant to the scope of the request Third party personal information identified	Exempt in Part	s.22(1)(a)(ii) s.47F(1)

2. Torture and Trauma Disclosures – July 2014 (Manus RPC)

Folio	Description	Decision	Legislation
1	Information or material that is irrelevant to the scope of the request Third party personal information identified	Exempt in Part	s.22(1)(a)(ii) 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).

**New Torture and Trauma Disclosures - July 2014
(Manus RPC)**

Boat ID	Transferee Name (LAST, FIRST)	Date T&T Disclosed	Comments
s. 47F(1)	s. 47F(1), s. 22(1)(a)(ii)	s. 22(1)(a)(ii)	s. 22(1)(a)(ii)
		30/07/2014	

New Torture and Trauma Disclosures - July 2014 (Nauru RPC)

Boat ID	Transferee Name (LAST, FIRST)	Date T&T Disclosed	Comments
	s. 22(1)(a)(ii), s. 47F(1)	s. 22(1)(a)(ii)	s. 22(1)(a)(ii)
	s. 47F(1)	25/07/2014	
		25/07/2014	
		29/07/2014	
		30/07/2014	