



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/01/01172
File Number ADF2017/16185

Original scope of request

1. On 23 January 2017 you requested:

The reviews conducted by the Chief Medical Officer of the regional processing centres on Manus Island and Nauru.

The Chief Medical Officer conducted reviews of Manus regional processing centre in December 2013 and July 2015. The Chief Medical Officer conducted reviews of Nauru regional processing centre in May 2014 and January 2015.

Documents in scope

2. I have identified four documents relevant to your request as detailed in 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 document as listed in the Schedule of Documents;
 - Consultations with relevant business areas; and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Decision

5. I have decided to release the documents with exemptions applied in-part.

Exemptions applied

6. The exemptions are detailed in the Schedule of Documents and the Documents Released. The following exemptions were applied:

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

7. The Australian Information Commissioner's Guidelines state:

5.36 The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

5.37 The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

5.38 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future. On the other hand, the disclosure of ordinary business communications between health regulatory agencies revealing no more than the fact of consultation will not, of itself, destroy trust and confidence between agencies.

8. The relevant business areas within the Department have advised that release of parts of Documents 1, 2, 3 and 4 would, or could reasonably be expected to, damage the Department's working relationship with the Governments of Papua New Guinea and Nauru.
9. The exempted material comprises commentary regarding public health standards, services and environmental and infrastructure issues on Nauru and Manus.
10. As the Governments of Nauru and Papua New Guinea hold ultimate responsibility for the operation of the Regional Processing Centres (RPCs), some material regarding the services and conditions within the RPCs has also been assessed by the Department to be likely to damage the Department's relationship with those governments if released.
11. Accordingly, I have decided to exempt parts of the documents under s33(a)(iii) of the FOI Act.

Section 47C – deliberative processes

12. A document is conditionally exempt under s.47C(1) of the FOI Act if it includes deliberative matter. Deliberative matter is:

...content that is in the nature of, or relating to either:

- *an opinion, advice or recommendation that has been obtained, prepared or recorded, or*
- *a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or Minister.*

(Paragraph 6.52, Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982)

13. I am satisfied that Document 2 contains deliberative matter. The relevant material in the document comprises an opinion regarding an option for management of waste at the Nauru RPC.

Section 47F – personal privacy

14. 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'

15. I am satisfied that the documents to which you have sought access contain 'personal information'. The relevant material in the document includes names and other identifying information of:

- foreign government officials;
- contracted staff members;
- non-SES staff of other Australian government agencies; and
- medical officers working for non-Departmental agencies/bodies.

Disclosure would involve the 'unreasonable disclosure of personal information'

16. In assessing whether a particular disclosure would be 'unreasonable', s.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.

17. I consider that the personal information in the documents is not known to the applicant or available in the public domain. As such, I consider that disclosure of the personal information in the document would be unreasonable.

18. The personal information is therefore conditionally exempt from release, subject to a public interest test.

Section 47G(1)(a) – business information which would or could adversely impact a person’s business affairs

19. The exempted information in documents 1, 2, 3 and 4 comprises details relating to the performance of contracted service providers. The information also details service provider staff structuring and resources.

20. If released, this information would likely adversely impact the service providers’ commercial activities by revealing commercially sensitive material regarding their operations and performance. Some of the material would also give competitors an advantage when tendering for contracts.

21. I am therefore satisfied that the information specifically identified in the relevant documents is conditionally exempt under s.47(G)(1)(a) of the FOI Act.

Application of the public interest test (relevant to exemptions made under s.47C(1), s.47F(1) and s.47G(1)(a))

22. While I have found that the conditional exemptions in s.47C(1), s.47F(1) and s.47G(1)(a) of the FOI Act apply to the information outlined above, s.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

23. I acknowledge that release of the material conditionally exempted would promote the objects of the FOI Act, through facilitating and promoting public access to information.

24. I consider that the release of the material would inform debate on a matter of some public importance and interest.

25. I do not consider that release of the material would promote effective oversight of public expenditure, noting the amount of scrutiny already applied to the operation of the RPCs by bodies such as the Australian Parliament.

26. I do not consider that access would allow the applicant to gain access to his or her own personal information.

27. In contrast to the factors favouring release, I consider that the ability of Departmental officers to provide internal advice and opinions regarding sensitive matters to be essential for the effective and efficient management of processes.

28. I consider that the protection of the privacy of third parties, including foreign officials, medical staff and contracted staff to be a high priority.

29. I also consider that the protection of a business’s commercially sensitive information is in the public interest as it enables Government to have effective relationships with service providers and promotes fair competition amongst businesses tendering for Government contracts.

30. Taking into account the above matters, on balance, I consider that disclosure of the information in the documents exempted under s47C(1), s.47F(1) and s.47G(1)(a) to be contrary to the public interest. Accordingly, I have decided that the documents are

exempt in part under the relevant parts of the FOI Act. The exemptions have therefore been applied to the documents released.

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

31. I find that the documents relevant to your request contain some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the documents released.

32. The material deleted under s.22(1)(a)(ii) comprises:

- the names of Departmental non-Senior Executive Service staff (although position titles have been released). The intended deletion of this information was advised to you on 1 February 2017 (as part of the FOI request acknowledgment letter) and you did not raise any objections.



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

28 July 2017

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 17/01/01172
 File Number ADF2017/16185

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	12/2013	1-16	Chief Medical Officer review of public health and access to health services at Manus Regional Processing Centre	Irrelevant material deleted Exempt in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F(1) s.47G(1)(a)
2.	12/05/2014	17-27	Chief Medical Officer Nauru visit: 3-7 May 2014	Exempt in part	s.33(a)(iii) s.47C(1) s.47F(1) s.47G(1)(a)
3.	23/01/2015	28-46	Chief Medical Officer Nauru visit: 11-15 January 2015	Irrelevant material deleted Exempt in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F(1) s.47G(1)(a)
4.	07/2015	47-60	Chief Medical Officer visit to PNG – June 2015	Irrelevant material deleted Exempt in part	s.22(1)(a)(ii) s.33(a)(iii) s.47F(1) s.47G(1)(a)