



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/04/00235
File Number ADF2017/37689

Scope of request

1. On 31 March 2017 you requested:

Documents produced after May 1 2016, containing information including emails and/or briefing notes and/or assessments and/or reports and/or evaluations sent between the Department of Immigration and Border Protection and the Immigration Minister regarding the provision of and/or plans for the provision of garrison and welfare services relating to the offshore immigration detention centre on Nauru. I am specifically seeking documents relating to the plans for future provision of garrison and welfare services on the island, specifically but not limited to after October 2017.

Documents in scope

2. The Department has identified three documents totalling 22 pages. The documents are 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 documents 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.

6. 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.
7. 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).
8. 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.

Exemptions applied to the documents

9. The Schedule of Documents – Attachment B details the exemptions that have been applied. Exemptions were applied on the following grounds:

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

10. Section 33(a)(iii) of the FOI Act permits exemption of a document if the disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.
11. *The Office of the Australian Information Commissioner (OAIC) 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.

12. Document 2 within scope of this FOI request was prepared to provide the Minister for Immigration and Border Protection with an update on the provision of services in Regional Processing Countries.

13. The responsible business area of the Department has advised that release of the relevant exempted parts of the document could reasonably be expected to cause damage to the relationship between the Commonwealth and the Governments of Nauru and Papua New Guinea.
14. The exempted material contains opinions of a sensitive nature relating to Regional Processing Operations on Nauru and Manus Island. Release of the information would likely impact on the Commonwealth's ability to work collaboratively with the Governments of Nauru and Papua New Guinea in the future.
15. This assessment is made considering the nature of the information and current advice regarding the Department's relationship with Nauru and Papua New Guinea.

Section 47G(1)(a) – disclosure of business/commercial information which would, or could reasonably be expected to, unreasonably affect an organisation's commercial affairs

16. I am satisfied that Documents 1 and 2 contain sensitive commercial information.
17. The information consists of details relating to commercial entities participation in a Government tender process. The information relates to details regarding the tenderers bid for a contract, including, fiscal details and other contract conditions.
18. I am satisfied that this material provides a level of detail regarding the businesses participation in a tender process that goes beyond what is available in the public domain.
19. The release of this information into the public domain could reasonably be expected to disadvantage the tenderer's commercial affairs, as it would reveal details regarding its negotiation during a tender process available to potential competitors for other business.
20. I therefore find the material to be conditionally exempt under s.47G(1)(a) of the FOI Act.

Section 47E(d) – Have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

21. Section 47E(d) provides that a document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
22. The parts of the documents conditionally exempted under s.47E(d) contain sensitive information and discussion relating to tender processes for the provision of garrison and welfare services in Regional Processing Countries.
23. If the material subject to the exemptions were to be released I consider the Department's operations in respect to the management and delivery of tender processes would likely be adversely affected in the future. It is essential the Department be able to conduct tender processes with a degree of confidentiality in order to protect the financial interests of the Commonwealth; and preserve the integrity of operations in relation to tender processes.
24. I therefore find the material to be conditionally exempt under s.47E(d)

Section 47C – Deliberative processes

25. 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*
- *a consultation or deliberation that has taken place*
- *in the course of, or for the purposes of, a deliberative process of the agency or Minister.*

(Paragraph 6.56, Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982)

26. I am satisfied that Documents 1, 2 and 3 contain deliberative matter. The relevant material in the documents comprises advice, opinions and consultations regarding the tender process for the provision of garrison and welfare services in RPC's.

Public interest test

27. While I have found that the conditional exemption in s.47G(1)(a), 47E(d) and 47C(1) of the FOI Act applies to the information in the documents, 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.

28. In determining whether disclosure would be contrary to the public interest, s.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.

29. I acknowledge that release of the material conditionally exempted would promote the objects of facilitating and promoting public access to information.

30. I consider that 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.

31. In contrast to the factors favouring release, I note that the material contains sensitive commercial information and its release could disadvantage a contracted party's commercial competitiveness for a potentially wide range of work.

32. I also consider that the ability of the Department to conduct tender processes in confidence and probity to be in the public interest.

33. On balance, I have decided that the public interest lies in not disclosing the material assessed as conditionally exempt under s.47G(1)(a), 47E(d) and 47C(1) in this instance. The documents are therefore exempted in part under the relevant sections of the FOI Act.

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

34. I find that the documents relevant to your request contain material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the documents released.
35. The material deleted under s.22(1)(a)(ii) consists of material not within scope of the request (for example: attachments to the emails providing advice to deployed staff on conditions of living and working on deployment, conduct agreement, travel booking information and medical/allergen advice forms.)



Authorised decision maker
Department of Immigration and Border Protection
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// August 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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File Number ADF2017/37689

No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	06/2016	1-4	Submission to the Minister for Immigration and Border Protection – change in ownership of Broadspectrum	Irrelevant material deleted Released in part	s.22(1)(a)(ii) s.47C(1) s.47E(d)
2.	08/2016	5-14	Submission to the Minister for Immigration and Border Protection – update on Garrison and Welfare provision of services in RPS's	Irrelevant material deleted Released in part	s.22(1)(a)(ii) s.33(a)(iii) s.47C(1) s.47E(d) s.47G(1)(a)
3.	11/2016	15-21	Submission to the Minister for Immigration and Border Protection – PII claim on QoN SE16/012 – Supplementary Estimates on 17 October 2016	Released in part	s. 47C(1)