



## **Freedom of Information – Decision on Access**

### **1 Request for access to documents**

The Department received a number of requests for access to documents relating to an incident on Manus Island on 14 April 2017. These requests were received between 21 April 2017 and 4 May 2017 and are considered as requests seeking access to the same material.

This notice contains the Department's decision on access to the documents subject to your request.

### **2 Documents in scope of request**

I have identified that a total of six documents fall within the scope of all requests received by the Department.

These six documents consist of one Hot Issues Brief (HIB) sent on 14 April 2017 at 8:26pm, and five HIB updates sent between 14 April 2017 and Sunday 16 April 2017.

### **3 Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

### **4 Relevant material**

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

### **5 Decision on access**

The decision in relation to the documents in the possession of the Department which come within the scope of your request is to release six documents in part with deletions.

The reasons for my decision are set out below.

### **6 Reasons for Decision**

#### **6.1 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.

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.

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 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.

## **6.2 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations**

### Section 33(a)(iii) – documents affecting international relations

Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

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 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 be real and substantial grounds for the conclusion that are supported by evidence.

The information detailed in the documents relates specifically to an incident that occurred on Manus Island on Friday 14 April 2017. The incident occurred within the jurisdiction of Papua New Guinea (PNG), as a sovereign nation, and has been investigated under the statutory framework of the PNG government, namely the PNG Defence Force and the Royal Papua New Guinea Constabulary (PRNGC). PNG is a sovereign nation and as such the Australian Government does not have extraterritorial control, governance or jurisdiction.

I consider it is important for Australia to maintain good working relationships with coalition partners and that releasing this information would adversely impact on the ability of the Department, and as a result, the Australian Government, to maintain good working relations with the PNG Government.

This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australian Government's relationship with the PNG Government.

As such I have decided that the information marked 's33(a)(iii)' in the documents is exempt from disclosure under section 33(a)(iii) of the FOI Act.

### Section 33(b) – documents containing information communicated in confidence

Section 33(b) provides that a document is an exempt document if disclosure would divulge information or matter communicated in confidence by a foreign government, an authority of a foreign government or an international organization to the Commonwealth.

The Information Commissioner Guidelines state that information is communicated in confidence by or on behalf of another government if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Where the information is, in fact confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations.

The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access to that communication.

An agreement to treat documents as confidential does not need to be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communications.

Having considered these factors, I am satisfied that the information contained within the documents subject to this request and marked 's33(b)' was communicated in confidence by or on behalf of the PNG government, and was received by the Australian Government under an understanding of confidentiality. There was clear general understanding between the relevant parties that the communication would be treated in confidence.

As such, I have decided the information marked 's33(b)' in the documents is exempt from disclosure under section 33(b) of the FOI Act.

### **6.3 Section 47E of the FOI Act – Operations of Agencies**

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Parts of the documents would disclose direct contact details for operational areas within this Department that are not otherwise publicly available. I consider that the disclosure of this information could reasonably be expected to result in potential vexatious communications and general public inquiries being directed to these contact points which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of these business areas, I am of the view that such a diversion of their resources to manage potentially vexatious communications and general inquiries into the Department could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

I also consider that the disclosure of parts of the documents would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department. This includes information detailing operational activities at the Regional Processing Centre (RPC). The Department contracts service providers (CSP) to assist the PNG Government to provide safe and secure environments for staff and detainees at the RPC. The working partnership between the garrison and welfare service provider, PNG Immigration and Citizenship Service and the RPNGC Support Unit ensures the safety and security of people working and accommodated at the RPC.

In the event that the operational activities of the Department's CSP and their subcontractors is prejudiced, this would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of this Department.

Accordingly, I have decided that parts of the documents marked 's47E(d)' are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

### **6.4 Section 47F of the FOI Act – Personal Privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. This information would render the individual concerned as reasonably identifiable.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The information relating to the individual is not well known and would only be known to a limited group of people. The information is only known to staff within the Department itself with a business need to know. As this information is only known to a limited group of people, the individual concerned is not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

There is a protective element to my decision, noting that the individual concerned is under the age of 18, and as such, a minor.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

#### **6.5 The public interest – section 11A of the FOI Act**

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does appear to have the character of public importance. I note that the issue has been discussed extensively at Senate Estimates hearings and this is a matter of public record.

- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents:

- I consider that the disclosure of the parts of the documents that are conditionally exempt under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice operational activities of the Department's contracted service providers and, as a result, the operational activities of the Department. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its operational activities is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- The disclosure of the personal information which is conditionally exempt under **section 47F** of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- access to the document could result in any person misinterpreting or misunderstanding the document;*
- 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;*
- access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

## 7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

## 8 Your Review Rights

### Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days. Applications for review should be sent to:

Freedom of Information Section  
 Department of Immigration and Border Protection  
 PO Box 25  
 BELCONNEN ACT 2617

OR

By email to: [foi.reviews@border.gov.au](mailto:foi.reviews@border.gov.au)

*Review by the Office of the Australian Information Commissioner*

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

**9 Making a Complaint**

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

**10 Contact**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au).



**Authorised Decision Maker**

**Department of Immigration and Border Protection**