



19 October 2017

In reply please quote:

FOI Request FA 17/05/01120-R1
File Number ADF2017/53729

Dear [REDACTED]

Freedom of Information request – decision on internal review

This letter refers to the internal review, under section 54 of the *Freedom of Information Act 1982* (FOI Act) received by the Department of Immigration and Border Protection (the Department) on 25 August 2017.

On 15 August 2017, [REDACTED] of Health Services and Policy Division, decided to refuse access to documents in accordance with section 24A(1) [no documents exist] of the FOI Act. The decision you received related to your request for access to:

all reports provided by the Independent Health Advice Panel since 1 January 2016 in relation to systemic or population-type issues, not individual cases.

The Department wrote to you on 21 August 2017 advising that documents had been identified that may fall within the scope of your request. You agreed to a suggested internal review of the decision.

Background

I note your internal review decision was due on 24 September 2017. I apologise for the delay with this matter.

Scope of internal review

The review centred on whether there were documents within the scope of your request and if so, to assess them for release to you.

Information considered

In reaching my decision, I have considered the following:

- the terms of your original request
- the *Freedom of Information Act 1982*;
- the Australian Information Commissioner's guidelines; and
- consultation with the relevant business areas.

Decision

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

I have decided to vary the original decision and release documents determined to be within the scope of your request (details at Attachment A – Schedule of Documents)

- I have decided to exempt Document 1 in full under section 33(a)(iii) – Documents affecting the International Relations of the Commonwealth.
- I have decided to exempt Documents 2 and 3 in part under section 33(a)(iii) – Documents affecting the International Relations of the Commonwealth.

Fresh decision

The FOI Act requires that I conduct a fresh decision to satisfy section 54C (2) of the FOI Act which notes, that an agency must, as soon as practicable, arrange for a person other than the person who made the original decision to review the decision. Section 54(3) requires that the person must make a fresh decision.

With this in mind, I assessed the documents identified during the review of your original decision. I have determined that no further documents are held by the Department that fall within the scope of your request.

Consultation

As part of the internal review, I consulted with the relevant business area of the Department in relation to the identified documents.

Advice received from the relevant business area is that the documents contain material that if it was to be released could harm the Department's International Relations with the Governments of Papua New Guinea and Nauru.

Section 33(a)(iii) - Documents affecting International Relations

Section 33(a)(iii) of the FOI Act exempts a document from release where its disclosure 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 documents include information about foreign governments and provides an insight into the Australian Government's relationship and cooperation with those foreign governments. In particular with regard to the medical capability of both Papua New Guinea and Nauru.

I consider that the disclosure of the material within the documents would disclose information that is expected to adversely impact Australia's relations with those foreign governments, subsequently rendering the foreign governments and their agencies less willing to cooperate with the Australian government in the future. In reaching this assessment I have consulted with and considered the advice of the relevant business area within the Department.

I am satisfied that the material identified in the documents is subject to exemption under section 33(a)(iii) of the FOI Act.

Review rights

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of my decision. You must apply in writing within 60 days of this notice. For further information about your review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at www.oaic.gov.au.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

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.

Yours sincerely



Authorised decision maker
Freedom of Information Section
Department of Immigration and Border Protection
Email foi.reviews@border.gov.au

Attachments

- ✓ Attachment A – Schedule of Documents
- ✓ Attachment B – Documents released



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	27 Feb 2016	-	Clinical Services Capability	Exempt in full	s.33(a)(iii)
2.	2016	1-21	Assessment of Emergency Medical Capability and Capacity Nauru 2016	Exempt in part	s.33(a)(iii)
3.	2016	22-43	Assessment of Emergency Medical Capability and Capacity PNG 2016	Exempt in part	s.33(a)(iii)