



**Australian
Human Rights
Commission**

Our Ref: F2016/11

6 April 2016

Ms Ariana Norton
By email: tlyons@moray.com.au

Dear Ms Norton

Request for documents under the *Freedom of Information Act 1982 (Cth)*

I refer to your 28 February 2016 request under the *Freedom of Information Act 1982 (Cth)* (FOI Act) for:

... copies of any complaints filed pertaining to New Zealand citizens being held in detention on Christmas Island between 1/10/15 and 1/12/15.

On 29 February 2016, I emailed you seeking to confirm the scope of your FOI request:

Just so that I'm clear on what you are seeking, could you please confirm that you seek access to:

- Copies of any complaints to the Commission by New Zealand citizens who are held on Christmas Island;
- Where the complaints were filed with the Commission in the period 1/10/15 to 1/12/15.

Later that day, you confirmed that this was the scope of your FOI request.

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

1 Searches

On receipt of your request, I forwarded it to the Director of the Investigation and Conciliation section of the Commission, who arranged for searches of the Commission's Resolve database. This database lists key details of all complaints lodged with the Commission.

The Commission's searches of the Resolve database identified four potentially relevant complaint files in relation to your request, these being:

- Complaint file 2015-17417;
- Complaint file 2015-18197;
- Complaint file 2015-18486;
- Complaint file 2015-18689.

All of these complaints were made by, or on behalf of, New Zealand citizens who were at one point held on Christmas Island. They were made to the Commission in the relevant period identified in your FOI request.

However, a further review of these complaint files established that a number of the complainants were no longer 'held on Christmas island'. The complainant in file 2015-18689 had returned to New Zealand and the complainant in file 2015-17417 had been transferred to an immigration detention centre on the Australian mainland. Accordingly, these matters do not fall within the scope of your FOI request.

In conclusion, there were only two complaints made to the Commission which fall within the scope of your FOI request. The complaint documents from these two files have been folio numbered 1 to 5.

2 Third party consultation

During the course of the preliminary document review, I established that documents answerable to your FOI request included third parties' personal information¹ (i.e. personal information of the complainants and in some instances their representatives). I formed the view that they may reasonably wish to make an exemption contention.²

Accordingly, I consulted these third parties, pursuant to section 27A of the FOI Act, in relation to the potential disclosure of their personal information.

In relation to complaint file 2015-18486, I did not receive any submissions from the complainant or their representative objecting to the disclosure of their personal information.

In relation to complaint file 2015-18197, the complainant's representative made submissions objecting to the disclosure of personal information. On 18 March 2016, the complainant's representative made the following submissions:

I have spoken to [complainant] about this and he and I both **object** to the disclosure of this information as the complaint was made as we understood via a private forum and never thought that this would become public information.

¹ FOI Act, s 47.

² FOI Act, s 27A.

Also as it contains personal information about [complainant] and we object to this being in the public domain as once the information is given out the AHRC has no control over what happens to it.

[Complainant] has incurred enough stress and trauma through being in detention without having to worry about his personal business being widely known in the public domain.

Thereafter, I prepared provisional redactions of the complaint document in relation to complaint file 2015-18197 (at folios 1-2). I emailed this document to the third party and asked her if the provisional redactions reflected her submissions. She confirmed that they did.

3 Decision

I have decided to grant access, in part, to the documents at folios 1-5. The material redacted is conditionally exempt from release, pursuant to section 47F of the FOI Act, because it would involve an unreasonable disclosure of personal information and it would be contrary to the public interest to disclose it to you (section 11A of the FOI Act).

3.1 *Material taken into account*

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- the FOI Act (specifically, sections 47F and 11A);
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- the views of third parties who were consulted by the Commission under section 27A of the FOI Act.

The reasons for my decision are set out below.

4 Reasons for decision

4.1 *Conditional exemption relating to personal privacy*

(a) *Personal Information*

Pursuant to section 47F of the FOI Act, a document is conditionally exempt if disclosure of the document would involve the unreasonable disclosure of personal information about any person.

Personal information, for the purposes of the FOI Act, is information about an individual whose identity is either apparent or may be reasonably ascertained from the information.

The documents include:

- the names of the complainants;
- their phone numbers;
- their email addresses;
- their ethnic / national origin;
- the reasons for their complaint;
- a summary of their complaint; and
- their representatives' details.

I consider that this material is personal information for the purposes of the FOI Act.

(b) *Unreasonable Disclosure*

Having established the existence of personal information in the documents identified above, I now turn to consider whether disclosure of this personal information would be unreasonable. In undertaking this assessment, I have considered:

- competing interests of disclosing government-held information and the private interest in the privacy of the individual; and
- relevant factors set out in section 47F(2) of the FOI Act.

I note that while it is well known that a number of New Zealand citizens have been detained on Christmas Island following the cancellation of their visas,³ the identities of these individuals are not well known. The complaints which these individuals have made to the Commission are not published or publicised by the Commission, therefore the fact of the complaints (and the details of the complaints) is not information which is available from publicly accessible sources.

I accept the submissions of the complainant's representative in complaint file 2015-18197. I note that they 'never thought this would become public information' (or be released into the public domain via the FOI Act) and that disclosure of the information would cause distress to them. For these reasons, I consider that the release of the material which has been redacted at folios 1-2 would be an unreasonable disclosure of personal information.

In relation to the complaint at folios 3-5, while I invited the complainant and their representative to make submissions in relation to the potential disclosure of this document, they chose not to make any submissions. I note that in my 16 March 2016 letter consulting them I had explained that 'if a response is not received by 23 March 2016, the Commission's decision maker will assume you do not object to release of the document'. As at today's date, a response has not been received.

I have independently considered the factors set out in section 47F(2) of the FOI Act, with regard to the document at folios 3-5. I believe that disclosure of the complainant's name, phone number, email address and places of detention would be an unreasonable disclosure of personal details, as it may enable someone to

³ See generally, <http://www.theguardian.com/australia-news/2016/mar/11/visas-of-81-bikie-gang-members-have-been-cancelled-peter-dutton-says>

ascertain the complainant's identity. Similarly, I believe it would be unreasonable to disclose the name, phone number and address of the representative who has assisted with making a complaint to the Commission. I do not consider that it would be unreasonable to disclose the general summary of the complaint, at folios 4-5.

4.2 *Contrary to the public interest*

Pursuant to section 11A(5) of the FOI Act, a document must be disclosed even if it is conditionally exempt, unless disclosure of the document would be contrary to the public interest.

Section 11B(3) of the FOI Act sets out factors favouring disclosure of the documents. These include:

- (a) promoting the objects of the Act;
- (b) informing debate on a matter of public importance;
- (c) promoting effective oversight of public expenditure; and
- (d) allowing a person to access his or her own personal information.

(a) Factors favouring disclosure

A number of these factors are enlivened in relation to the disclosure of the complaint details (under the headings 'I am complaining because I believe' and 'What happened') at folios 1-2. Firstly, this information has the potential to inform debate on a matter of public importance – being the detention of New Zealand citizens on Christmas Island.

Secondly, this information has the potential to promote the objects of the FOI Act, which include:

- promoting Australia's representative democracy by contributing towards increasing public participation in Government processes, with a view to promoting better-informed decision-making (section 3(2)(a) of the FOI Act); and
- promoting Australia's representative democracy by contributing towards increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(a) of the FOI Act).

In relation to personal information such as names, phone numbers, email addresses, I do not consider that any factors favouring disclosure are enlivened.

(b) Factors against disclosure

The FOI Act does not specify any factors against disclosure, but the FOI Guidelines include a non-exhaustive list of such factors. In relation to the conditionally exempt material, the factors that are relevant is that disclosure:

- could reasonably be expected to prejudice the protection of an individual's right to privacy;
- could reasonably be expected to prejudice an agency's ability to obtain confidential information; and
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

I note, for example, the third party's submissions that they had understood the complaint to be made in private. Disclosure, in this context, has the potential to prejudice the Commission's ability to obtain this sort of information – being human rights complaints – in the future. I must attribute significant weight to this factor against disclosure.

(c) *Assessment*

While the factors favouring disclosure carry some weight in the present instance, I do note that there is already (without this information) a robust level of debate in the public arena about the detention of New Zealand citizens on Christmas Island. I do not believe that this particular information would materially add to that debate. I do however, attribute significant weight to the factors against disclosure. In balancing the factors for and against disclosure, I find that the factors against disclosure carries more weight in the present instance.

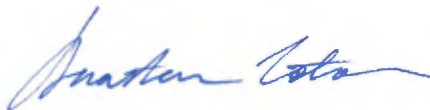
Therefore, I have decided that release of the redacted material would be contrary to the public interest and, accordingly, the documents are exempt.

5 Avenues of review

For your information, I also enclose information relating to your rights of review of the Commission's decision.

Please call me if you have any questions in relation to this matter.

Yours sincerely



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