



28 June 2016

In reply please quote:

FOI Request FA 16/03/00145

File Number ADF2016/9750

Ms Brie Cooney

Sent via email: foi+request-1677-682303ce@righttoknow.org.au

Freedom of Information request – decision on request

Dear Ms Cooney,

This letter refers to your request received on 29 February 2016 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to documents as follows:

Documents relating to claims, requests and reviews made by those detained in offshore detention centres regarding the facilities, more specifically medical services provided and the facilities to go with. The dates I seek of these documents are from Jan 2015 and throughout 2016.

Decision

The Department has identified four documents that fall within the scope of your request. The decision is to exempt the documents in part.

The reasons for the decision are set out in the attached Decision Record at **Attachment A**. The schedule for the documents is at **Attachment B** for your reference.

Review rights

Internal review

If you disagree with the Department's decision, you have the right to apply for an internal review by the Department of the 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 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
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@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 the Department's decision. You must apply in writing within 60 days of this notice. For further information about 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 this FOI request

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department of Immigration and Border Protection in relation to your request.

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)

Email ombudsman@ombudsman.gov.au

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

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Ombudsman or 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.

Contacting the FOI Section

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

Yours sincerely,

Brad Collins
Freedom of Information Section
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachments

- ✓ Attachment A – Decision Record
- ✓ Attachment B – Schedule of Documents
- ✓ Attachment C – Extract of relevant legislation
- ✓ Attachment D – Documents released



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/03/00145
File Number ADF2016/9750

Scope of request

1. On 29 February 2016 you requested:

Documents relating to claims, requests and reviews made by those detained in offshore detention centres regarding the facilities, more specifically medical services provided and the facilities to go with. The dates I seek of these documents are from Jan 2015 and throughout 2016.

2. The documents that you requested were provided by IHMS in the form of four summary spreadsheets. I have interpreted the scope of your request to exclude personal identifiers (such as names), and as such, IHMS did not provide this information. I have removed blank columns from the document to improve readability.

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 terms of your request
 - the *Freedom of Information Act 1982*;
 - the Australian Information Commissioner's guidelines relating to access to documents held by government
 - Departmental documents, identified in the Schedule of Documents
 - consultations with the relevant business area.

Conditionally exempt documents

5. The documents I have considered also fall under a conditional exemption in the FOI Act. The FOI Act provides that conditionally exempt information must be released unless the decision maker reaches the view that release of the information would be contrary to the public interest.

Personal information - Section 47F(1)

6. A document is conditionally exempt under s.47F(1) of the FOI Act if its release would involve the “*unreasonable disclosure of personal information about any person, including a deceased person*”.
7. For information or documents to be exempt under this provision, the information in the documents must meet the definition of “personal information” in s.4(1) of the FOI Act and I must be satisfied that the release of the information is unreasonable.
8. The test of unreasonableness implies a need to balance the public interest in disclosure of government-held information and private interests of individuals.

Personal Information

9. I am satisfied that the information contained in the documents which I am exempting is the personal information of the individuals concerned. The personal information includes the specific medical conditions and treatments of numerous detainees which, even without names, is specific enough that it could be used to identify detainees.

Unreasonable disclosure

10. Section 47F(2) of the FOI Act sets out the factors that may be considered when determining whether release is ‘unreasonable’. They are:
 - 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 within the document;
 - the availability of the information from publically accessible sources; and
 - any other matters that the department considers relevant.
11. The third parties’ personal information is not well known and would only be known to a limited group of people. The information is unlikely to be known outside of the Department or the facilities in question. On balance, I believe that this factor weighs against the release being reasonable.
12. This personal information is not available from publically available sources and does not appear to be in the public forum. The information is contained in internal documents, created for an administrative process. On balance, I believe that this factor weighs against the release being reasonable.
13. I have also considered the following factors:
 - The information is not your personal information.
 - Every person has the right to expect that their personal information will be securely maintained by the Department.
14. On balance I am satisfied that the release of the third party personal information would be ‘unreasonable’ in the context of the request.
15. Therefore, I am satisfied that the conditional exemption in s.47F(1) applies to the documents.

Application of the 'public interest' test

16. Although I have found that the information contained in the document you requested is conditionally exempt from release under s.47F(1), 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.

17. The factors favouring access to information are provided at s.11B of the FOI Act:

Factors favouring access

- (3) *Factors favouring access to the document in the public interest include 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.*

Factors weighing in favour of release

18. I am satisfied that the release of the documents would promote the objects of the FOI Act by providing access to information held by Government, which is in the public interest.

19. However, I am satisfied that the release of the third parties' personal information contained in the relevant documents would not have any bearing on or relevance to any matter of public debate, would not enable effective oversight of public expenditure, and would not allow you to access your own information.

Factors weighing against release

20. The Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act.

21. I consider that these factors are relevant to the personal information in the identified documents:

- disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy;
- it is a core Government concern to maintain the integrity of the information it holds and to maintain an individual's privacy; and
- no purpose would be achieved/served by releasing the third party personal information.

22. On balance, I consider that the public interest factors against release of the exempted information outweigh the public interest factors for release of the information. I therefore partially exempt the document from release under s.47F(1) of the FOI Act.

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

28 June 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/03/00145
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No.	Pages	Description	Decision on release	
			FOI Act Exemptions	
1.	1-77	Manus complaints register 2015	s.47F(1)	Exempt in part
2.	78-89	Manus complaints register 2016	s.47F(1)	Exempt in part
3.	90-123	Nauru complaints register 2015	s.47F(1)	Exempt in part
4.	124-126	Nauru complaints register 2016	s.47F(1)	Exempt in part

Attachment C – Extract of relevant legislation

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

47F Public interest conditional exemptions—personal privacy

General rule

- (1) 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).

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
- (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;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.