



19 June 2017

In reply please quote

FOI Request FA 17/04/00614
File Number ADF2017/41943

Mr Dan West

Sent via email: foi+request-3428-0171013d@righttoknow.org.au

Freedom of Information request

Dear Mr West,

This letter refers to your request received on 19 April 2017 seeking access under the *Freedom of Information Act 1982* (the Act) to the following documents:

Any administrative measures and/or arrangements between Australia and Nauru relating to the "Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues", signed and entered into force 3 August 2013, and the "Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues", signed and entered into force 29 August 2012.

This letter is to provide you with the decision which is at Attachment A – Decision Record.

There is one document within the scope of your request. This document is detailed in Attachment B - Schedule of Documents.

FOI Legislation

A copy of the FOI Act is available for your reference from:
www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal

Review rights

Internal review

If you disagree with the decision, you have the right to apply for an internal review of the decision. If you wish to make a request for internal review this must be sent within 30 days of 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.reviews@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Australian Information Commissioner for a review of the decision. You must apply in writing within 60 days of this notice. For further information about review rights under the FOI Act 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 also 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.

Yours sincerely

(signed electronically)

Renata Buchanan
FOI Officer
Freedom of Information, Privacy & Records Management Branch
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachment(s)

- ✓ Attachment A – Decision Record
- ✓ Attachment B – Schedule of Documents



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/04/00614
File Number ADF2017/41943

Original scope of request

1. On 19 April 2017 you requested:

Any administrative measures and/or arrangements between Australia and Nauru relating to the "Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues", signed and entered into force 3 August 2013, and the "Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues", signed and entered into force 29 August 2012.

Documents in scope

2. There is one document within the scope of your request. This document is 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.

Reasons for decision

5. 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.

6. 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).
7. 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

8. 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

9. The Australian Information Commissioner's 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.

10. I have decided that the document relevant to your request – *Administrative Arrangements for Regional Processing and Settlement Arrangements in Nauru* is exempt in full under s33(a)(iii) of the FOI Act, as disclosure of this information would, or could reasonably be expected to, cause damage to Australia's international relations.
11. The exempted document was signed by both parties with a clear understanding that the details of the document were to remain confidential to the governments of Australia and Nauru. Release of the document would breach the Australian Government's commitment to the Government of Nauru to keep the document confidential.

12. Consultation with relevant Departmental business areas, in relation to this FOI request, has confirmed that release of the document would or could reasonably be expected to damage the Department's working relationship with the Government of Nauru.
13. This assessment is made considering the nature of the information and current advice regarding the Department's relationship with Nauru.
14. Accordingly, I have exempted the document in full under s33(a)(iii) of the FOI Act.

(signed electronically)

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

19 June 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 17/04/00614
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No.	Date of document	Folios	Description	Decision on release	Applicable part/s of the FOI Act
1.	11/04/2014	1-16	Administrative Arrangements for Regional Processing and Settlement Arrangements in Nauru	Exempt in full	S33(a)(iii)