



7 May 2020

Ms E Davey

BY EMAIL: foi+request-5820-99cb3d76@righttoknow.org.au

In reply please quote:

FOI Request: FA 19/11/01160

File Number: OBJ2019/59187

Dear Ms Davey

Freedom of Information (FOI) request - Access Decision

On 21 November 2019, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

Requesting the initial Letter(s) of Intent or Head(s) of Agreement for Save the Children operations on Manus Island. The period in question is approximately October 2012 to June 2013.

2 Authority to make decision

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 records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

4 Documents in scope of request

The Department has identified two documents as falling within the scope of your request. These documents were in the possession of the Department on 21 November 2019 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release two documents in part with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

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.

On 22 November 2019, 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 documents marked 's22(1)(a)(ii)' 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) 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.

I consider that the release of the information marked 's33(a)(iii)' in the document(s) would, or could reasonably be expected to cause damage to the Australian Government's international relations.

The information contained in parts of document 2 relate to the Manus Island Regional Processing Centre in Papua New Guinea (PNG).

I consider releasing part of document 2 would adversely impact on the ability of the Department to maintain good working relations with the Government of PNG. This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australia Government's relationship with the Government of PNG.

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

6.3 Section 47 of the FOI Act – Documents disclosing commercially valuable information

Section 47 provides that a document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

In determining whether the information within the documents is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I consider that document numbered 2 contains information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The information contained within the document is valuable for the purpose of carrying on the commercial activities in which the entity is engaged. The information is relevant to the profitability or viability of a continuing business operation. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity.

I have therefore decided that parts of document numbered 2 are exempt from disclosure under section 47 of 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:

OR By email to: foi.reviews@homeaffairs.gov.au

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

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

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 Home Affairs as the relevant agency.

10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

A handwritten signature in black ink, appearing to read 'L. Dang', written in a cursive style.

Long Dang

**Authorised Decision Maker
Department of Home Affairs**

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982***

FOI request: FA 19/11/01160

File Number: OBJ2019/59187

No	Date of document	Description	No. of pages	Decision on release	
1.	12/10/2012	Letter of Intent - Save the Children (SCA)	2	Release in part	S22(1)(a)(ii)
2.	17/04/2013	Save the Children Heads of Agreement	59	Release in part	S22(1)(a)(ii), S47(1)(b), S33(a)(iii)
	Total pages		61		