



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 23-201

Michelle O'Brien

Email: [foi+request-10050-a51575eb@righttoknow.org.au](mailto:foi+request-10050-a51575eb@righttoknow.org.au)

Dear Ms O'Brien

## Decision on your Freedom of Information Request

I refer to your request of 10 March 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 2 Material taken into consideration

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them.

### 3 Scope of your request

You requested access to:

*I would like to view the acquittal reports for Reimagine Nambour (Incorporated Association) for use of a \$500,000 federal grant issued through the Building Better Regions Fund.*

*I would also like to view the acquittal reports for Nambour Alliance (Incorporated Association) for use of a \$50,000 and federal grant issued through the Building Better Regions Fund*

GPO Box 594, Canberra ACT 2601, Australia

• websites [infrastructure.gov.au](http://infrastructure.gov.au) | [arts.gov.au](http://arts.gov.au)



## 4 Decision

The right of access under the FOI Act is limited to a document in the possession of the Department.

A 'document' that may be requested under the FOI Act does not include material maintained for reference purposes that is otherwise publicly available. Also, a 'document of an agency' is limited to a document in the possession of the Department, whether created in the Department or received in the Department (section 4 of the FOI Act refers).

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document, and
- (b) the agency or Minister is satisfied that the document:
  - (i) is in the agency's or Minister's possession but cannot be found, or
  - (ii) does not exist.

Part 1 of your request seeks access to *the acquittal reports for Reimagine Nambour (Incorporated Association) for use of a \$500,000 federal grant issued through the Building Better Regions Fund*. The business area responsible for the subject matter of your request has conducted searches of the Department's information holdings, however no documents matching the description in your request were identified as being in the possession of the Department.

I am satisfied that all reasonable steps have been taken to find documents which would be relevant to Part 1 of request and that the documents do not exist in the possession of the department.

Therefore, I have decided to refuse Part 1 of your request in accordance with section 24A of the FOI Act, on the basis that the Department does not hold a document in its possession that meet the terms of this part of your request.

In relation to Part 2 of your request which seeks access to *the acquittal reports for Nambour Alliance (Incorporated Association) for use of a \$50,000 and federal grant issued through the Building Better Regions Fund*, I have identified one document and five associated attachments that are relevant to your request. These documents existed when your request was received.

I have decided to grant partial access to the one document, and to refuse access to its five attachments.

A schedule setting out the documents relevant to your request, with my decision in relation to documents, is at **ATTACHMENT A**.

My reasons for refusing access to information that is relevant to your request are set out below.

## 5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the relevant documents or parts of documents are set out below.

### 5.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).





## Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the documents or parts of the documents marked 's47F' in the schedule includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...



Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015] AICmr 26*, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the documents or parts of the documents marked 's47F' in the schedule are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 5.2 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the





business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The documents or parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

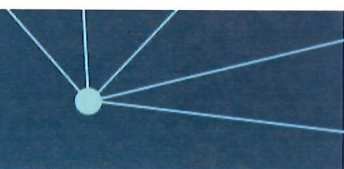
### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.



For the reasons outlined above, I decided that the documents or parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **5.3 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, the Department must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

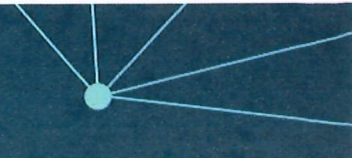
- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### **Factors weighing against disclosure**

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
- could reasonably be expected to prejudice the Department's ability to obtain confidential information



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- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5.4 Section 22 – deletion of exempt material**

Section 22 of the FOI Act applies to documents containing exempt material and allows an agency to delete such material from a document.

As I decided to grant you partial access to the information you have requested, I have prepared an edited copy of the documents being released by deleting the exempt information from the document under section 22(1)(a)(i) of the FOI Act.

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, the Department may also publish the released material on its Disclosure Log. The Department will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference the Department's Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).



## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely



Jane Hunt

*A/g*  
Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 8 May 2023



## SCHEDULE OF DOCUMENTS FOI 23-

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	13/06/2019	End of Project Report	Access granted in part	s47F s47G
1.1	31/05/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.2	29/10/2018	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.3	30/01/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.4	01/03/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.5	18/03/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at [www.oaic.gov.au/freedom-of-information/reviews-and-complaints/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).