

7 September 2023

Mr Stephen Not Given  
By email: [foi+request-10082-f2142fa2@righttoknow.org.au](mailto:foi+request-10082-f2142fa2@righttoknow.org.au)

Dear Stephen,

**Freedom of Information request (FOI-2023-10039)– Access decision**

1. I refer to your email dated 20 March 2023 in which you requested access to documents under the *Freedom of Information Act 1982* (FOI Act). Your request for documents was framed in the following way:

*‘Under the FOI Act I would like access to the original freedom of information requests received by the Office of the Commonwealth Ombudsman that are, as at 20 March 2023, the subjects of applications for Information Commissioner review (e.g. if 10 of the FOI requests that the Office of the Commonwealth Ombudsman has received are subjects of applications for IC review as at 20 March 2023, then please provide those 10 FOI requests).’*

2. The default statutory time frame for processing this application was 30 days. As this Office did not make a decision within that time frame, this request is considered a ‘deemed refusal’.
3. This matter is currently before the Information Commissioner for review. As such, I have the ability to make a revised decision varying the ‘deemed refusal’. In accordance with s 55G of the FOI Act, this is a revised decision granting partial access to the documents requested.

**Decision**

4. I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests.
5. Our Office has identified twenty-nine (29) documents relevant to your request. I have decided:
  - to grant part access to 9 documents (attached)
  - to refuse access to 20 documents.
6. A schedule setting out the relevant documents is at Attachment B. Our Office identified the documents by searching our electronic records management system and our case management system.

**Reasons**

7. My findings of fact and reasons for granting part access to the material are as follows.
8. In making my decision I had regard to the following:
  - the terms of your request
  - relevant provisions of the FOI Act
  - the Australian Information Commissioner’s Guidelines on FOI, available at [www.oaic.gov.au](http://www.oaic.gov.au) (the FOI Guidelines); and

- relevant case law and decisions

#### **Partial access**

9. 9 documents have been partially released to you as set out in the attached Schedule of Documents. The personal information of FOI applicants has been redacted. I have relied on the personal privacy conditional exemption to make those redactions (s 47F and 47E(d) of the FOI Act)

#### *Personal privacy*

10. Section 47F of the FOI Act conditionally exempts a document where “its disclosure would involve the unreasonable disclosure of personal information about any person.” I must give access unless access would, on balance, be contrary to the public interest. (s 11A(5))
11. ‘Personal information’ is defined in section 4 of the FOI Act as:

*information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.*

12. The documents contain personal information in the form of names of FOI applicants, addresses and contact details. I am satisfied that the relevant information is personal information: s 4 of the FOI Act.
13. In considering whether disclosure would be unreasonable, subsection 47F(2) of the FOI Act requires that I take into account:
  - 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 with in the document
  - the availability of the information from publicly accessible sources, and
  - any other matter considered relevant.
14. With regards to the partially released documents, while several of these have been published online and are accessible on the Right to Know website, the email addresses associated with those requests are not publicly accessible. These email addresses have been redacted.
15. With regards to applicant names and contact details, the relevant information is not well known. The individuals to whom the information relates are not generally known to be associated with the relevant information. The relevant information is not readily available from public sources.
16. I find that release of such information would involve the unreasonable disclosure of personal information under s 47F(1) of the FOI Act.

#### *Public interest*

17. In deciding whether access should be given to this information on the basis of public interest, I have taken into account the public interest factors for and against disclosure, s 11B(3) of the FOI Act, the FOI Guidelines at paragraphs 6.17 – 6.22, as well as matters specific to this agency’s functions and operating environment.
18. Given the focus of this application is FOI decisions that are currently at OAIC review stage, information of FOI applicants may increase scrutiny around the FOI decisions of the Commonwealth Ombudsman. However, release of the information could reasonably be expected

to prejudice the protection of a person's right to privacy, specifically the privacy of members of the public who have interacted with the Office

19. Pursuant to subsection 11A(5) of the FOI Act, I have concluded that this material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

#### **Access refusal**

20. 20 documents are exempt from release, pursuant to s 47E which provides

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to,:*

...

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*

21. Several documents located and within scope of your request include material relating to investigations or potential investigations conducted under the *Public Interest Disclosure Act 2013* (Cth) ('the PID Act') as well as complaints lodged with the Ombudsman. All documents revealing specific Public Interest Disclosures and complaints are exempt pursuant to s 47E. Where the document is related to a Public Interest Disclosure or a complaint, I have indicated that on the Schedule of Documents.

#### *Information revealing Public Interest Disclosures*

22. All FOI applications that refer to specific purported Public Interest Disclosures are exempt from production pursuant to s 47E(d) of the FOI Act.
23. The FOI Guidelines state at paragraph 6.122:

*The exemption may also apply to documents that relate to a complaint made to an investigative body. The disclosure of this type of information could reasonably affect the willingness of people to make complaints to the investigative body, which would have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations.*

24. The Ombudsman is an investigative agency involved in administering and enforcing the *Public Interest Disclosure Act 2013* ('PID Act'). Central to the Public Interest Disclosure scheme is the protection of those who make disclosures, as well as secrecy. Disclosure of even the purported existence of a PID Investigation, where the existence of that investigation is not well known, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of investigations in the future. Where information may indicate a PID was made, the release of any information increases the risk of reprisal for disclosers and other officials. Public detriment will arise if the Office is compromised in our ability to obtain confidential information in future PID or Ombudsman Act investigations.
25. I have considered the requirement outlined in s 11A of the FOI Act, that access must generally be given to a conditionally exempt document unless it would be, on balance, contrary to the public interest. In considering whether access would, on balance, be contrary to the public interest, I have considered the factors for and against disclosure, including the factors identified in s 11B(3) of the FOI Act. I have also considered the public interest factors favouring and against disclosure in the FOI Guidelines [6.17 – 6.19] and [6.22], as well as matters particular to the Ombudsman's functions and operating environment.

26. In considering whether the public interest would require the documents to be released, the factors against disclosure outweigh those in favour of disclosure. Specifically:
- a. Disclosure would reasonably be expected to prejudice the protection of an individual's right to privacy, in particular the right of disclosers
  - b. Disclosure would reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman
  - c. Disclosure would reasonably be expected to prejudice the Ombudsman's ability to obtain confidential information;
  - d. Disclosure may breach or undermine the secrecy provisions that apply to information obtained while conducting an investigation of a disclosure under the PID Act, particularly noting disclosure under the FOI Act does not limit further disclosure.

*Information revealing complaints*

27. Those documents that reveal complaints made to this Office and their investigation are exempt in full from release under s 47E(d) of the FOI Act.
28. Ombudsman investigations are dealt with in private pursuant to s 8(2) of the *Ombudsman Act 1976*, and Ombudsman officers are to observe confidentiality with respect to information disclosed under the Act. As per the Office's privacy policy, "due to the confidential nature of Ombudsman investigations we cannot disclose that a person has made a complaint to the Ombudsman."
29. As noted in *Australian Broadcasting Corporation and Commonwealth Ombudsman* [2012] AICmr 11 (26 April 2012) ('ABC') at [33]:
- "the Ombudsman Act establishes a framework within which the Ombudsman's investigations are conducted in private, and information disclosed or obtained under the Act is treated confidentially...Disclosure, under the FOI Act, of information provided to the Ombudsman by complainants in such circumstances would affect the willingness of people to make complaints to the Ombudsman in the future. That would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman's operations"*
30. I have considered the requirement outlined in s 11A of the FOI Act, that access must generally be given to a conditionally exempt document unless it would be, on balance, contrary to the public interest. In considering whether access would, on balance, be contrary to the public interest, I have considered the factors for and against disclosure, including the factors identified in s 11B(3) of the FOI Act. I have also considered the public interest factors favouring and against disclosure in the FOI Guidelines [6.17 – 6.19] and [6.22], as well as matters particular to the Ombudsman's functions and operating environment.
31. Disclosure may promote the objects of the FOI Act, including to:
- a. inform the community of the Government's operations, including, in particular, the practices followed by the Government in its dealings with members of the community
  - b. inform debate on a matter of public importance by allowing inquiry into possible deficiencies in the conduct or administration of an agency or official.
32. Whilst disclosure may increase transparency in Ombudsman investigations, that factor is outweighed by the risk posed to future investigations if the information is disclosed. Those who

make complaints to the Ombudsman must be assured that their complaints will be treated in confidence. Release of information, in particular personal information linked to a complaint or investigation could reasonably be expected to discourage future complaints.

33. Public detriment will arise if the Ombudsman is compromised in our Office's ability to obtain confidential information in future Ombudsman Act investigations. Further:
- a. Disclosure would reasonably be expected to prejudice the protection of an individual's right to privacy, in particular the right of complainants;
  - b. Disclosure would reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman;
  - c. Disclosure would reasonably be expected to prejudice the Ombudsman's ability to obtain confidential information; and
  - d. Disclosure would reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

*Personal privacy*

34. In addition to the exceptions noted above, where the complaint or public interest disclosure referred to in an FOI application is related to an individual, disclosure of that information would also constitute an unreasonable disclosure of personal information, though I note for completeness that those individuals have not been consulted as ultimately I have decided to not release the information.

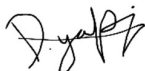
**Section 22- access to edited copies/deletion of exempt or irrelevant matter**

35. I provide access to an edited copy of the 9 relevant documents to you with conditionally exempt material –FOI applicant personal information – removed in accordance with s 22 of the FOI Act.
36. Documents containing email chains which contain material outside the scope of your request (i.e. that contain material which does not relate to the request for information received under the FOI Act including email chains attached to FOI requests) have been edited to remove irrelevant material.

**Contact details**

37. You may contact me via email at [information.access@ombudsman.gov.au](mailto:information.access@ombudsman.gov.au) or via telephone on 1300 362 072.

Yours sincerely



David Yalpi  
Legal Officer  
Legal Team

***Influencing systemic improvement in public administration***

Schedule of Documents – Freedom of Information Request FOI-2023-10039

Doc No.	Date	Pages/ Folio	Description of Document	Decision on access	Exemption	Notes
1.	14/11/2020	1 (1-1)	FOI request	Part access	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
2.	17/01/2022	1 (2-2)	FOI request	Part access	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
3.	17/02/2022	3 (3-5)	FOI request	Part access	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
4.	11/07/2019	1 (6-6)	FOI request	Part access	Material outside scope of request redacted under s 22  Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.

### Schedule of Documents – Freedom of Information Request FOI-2023-10039

Doc No.	Date	Pages/ Folio	Description of Document	Decision on access	Exemption	Notes
5.	30/09/2020	2 (7-8)	FOI request	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
6.	9/04/2022	3 (9-11)	FOI request	<i>Part access</i>	Material outside scope of request redacted under s 22  Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
7.	12/03/2022	2 (12-13)	FOI request	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
8.	22/11/2022	1 (14-14)	FOI request	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.
9.	17/04/2020	2 (15-16)	FOI request	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Personal information redacted.

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<b>10.</b>	<i>17/05/2020</i>	<i>14</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains complaint information.</i></p> <p><i>Contains personal information.</i></p>
<b>11.</b>	<i>16/12/2019</i>	<i>2</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information))</i></p>	<p><i>Contains complaint information.</i></p> <p><i>Contains personal information.</i></p>
<b>12.</b>	<i>16/08/2021</i>	<i>3</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<p><i>Material outside scope of request redacted under s 22</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains complaint information.</i></p> <p><i>Contains personal information.</i></p>



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13.	23/01/2023	3	FOI request	<b>Exempt in full</b>	<p>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</p> <p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Contains material related to Public Interest Disclosures.</p> <p>Contains personal information.</p>
14.	26/02/2022	2	FOI request	<b>Exempt in full</b>	<p>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</p> <p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Contains complaint information.</p> <p>Contains personal information</p>
15.	11/03/2023	5	FOI request	<b>Exempt in full</b>	<p>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</p> <p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Contains material related to Public Interest Disclosures.</p> <p>Contains personal information.</p>

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<b>16.</b>	<i>5/05/2022</i>	<i>1</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains complaint information.</i></p> <p><i>Contains personal information.</i></p>
<b>17.</b>	<i>31/01/2023</i>	<i>1</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains complaint information.</i></p> <p><i>Contains personal information.</i></p>
<b>18.</b>	<i>22/12/2020</i>	<i>1</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains material related to Public Interest Disclosures.</i></p> <p><i>Contains personal information.</i></p>

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Doc No.	Date	Pages/ Folio	Description of Document	Decision on access	Exemption	Notes
19.	13/12/2021	3	FOI request	<b>Exempt in full</b>	Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)  Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Contains material related to Public Interest Disclosures.  Contains personal information.
20.	21/07/2021	7	FOI request	<b>Exempt in full</b>	Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)  Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Contains complaint information.  Contains personal information
21.	16/06/2022	4	FOI request	<b>Exempt in full</b>	Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	Contains material related to Public Interest Disclosures.
22.	1/07/2022	3	FOI request	<b>Exempt in full</b>	Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	Contains material related to Public Interest Disclosures.

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<b>23.</b>	<i>23/11/2022</i>	<i>1</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>	<i>Contains personal information</i>
<b>24.</b>	<i>15/10/2022</i>	<i>3</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>	<i>Contains material related to Public Interest Disclosures.</i>
<b>25.</b>	<i>27/04/2021</i>	<i>1</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>  <i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i>	<i>Contains complaint information.</i>  <i>Contains personal information.</i>
<b>26.</b>	<i>10/06/2020</i>	<i>6</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>  <i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i>	<i>Contains complaint information.</i>  <i>Contains personal information.</i>

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<b>27.</b>	<i>5/04/2020</i>	<i>3</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>  <i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i>	<i>Contains complaint information.</i>  <i>Contains personal information.</i>
<b>28.</b>	<i>Unknown</i>	<i>8</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>	<i>Contains material related to Public Interest Disclosures.</i>
<b>29.</b>	<i>14/02/2022</i>	<i>4</i>	<i>FOI request</i>	<b><i>Exempt in full</i></b>	<i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i>	<i>Contains material related to Public Interest Disclosures.</i>

