

29 May 2023

Ms Rebecca Trapani

**By email:** [foi+request-10142-e7832718@righttoknow.org.au](mailto:foi+request-10142-e7832718@righttoknow.org.au)

Dear Ms Trapani,

### **FOI request - Decision on access**

I refer to your request under the *Freedom of Information Act 1982* received on 6 April 2023.

I am authorised under section 23 of the FOI Act to make decisions under that Act.

### **Background**

On 6 April 2023, you submitted an FOI request seeking access to documents related to the Age Verification Roadmap. On 17 April 2023 I sent you a request consultation notice because processing your request would have imposed a substantial and unreasonable diversion of the resources of eSafety. On 7 May 2023 you amended your request to seek access to the following (which I have numbered):

1. The Commissioner's personal input in writing into the final form of the roadmap in the three months leading up to its release, including emails, correspondence, diary and calendar entries, and minutes of meetings;
2. The roadmap itself and previous drafts of the roadmap, with comments on those drafts;
3. A list of third parties eSafety reached out to for consultation, including vendors;
4. A list of research topics or papers that were commissioned by the office for use in development of the roadmap;
5. A list of reports and research documents that support the conclusions, recommendations and policies of the age verification roadmap, and any the eSafety Commissioner's office are aware of, that contradict the recommendations;
6. A list of the material referenced in the roadmap; and,
7. A list of the commercial name and vendor of technical solutions referenced in the roadmap.
8. As per my last revision, I would like to exclude information that would require consultation with the third-party, for example personal information, but request that a summary is provided of their contribution to the process, and whether they were a private individual, company, advocacy group.

### **Decision**

I have decided to refuse access to documents in the scope of items 1 and 2 of your request under section 47E(d) of the FOI Act.

I have decided to grant access to 5 documents in response to items 3 to 7 of your request, listed in the schedule. I have explained my approach to your request in my reasons below, as eSafety does not have the precise material you asked for in each case. Material irrelevant to your request has been deleted from some of the documents under section 22 of the FOI Act. Further to our acknowledgement on 17 April 2023, we have treated the personal information of public servants as irrelevant to your request.

In relation to item 8, a summary of the contributions made through submissions and consultations is available at <https://www.esafety.gov.au/about-us/consultation-cooperation/age-verification>, which I am releasing in full by providing that link. Consistent with your request, the consultation summaries indicate participants' sectors.

### **Material taken into account**

I have taken the following material into account in making my decision on access:

- the scope of your revised request;
- the content of the documents in scope of your request;
- the relevant provisions of the FOI Act;
- advice from eSafety staff; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)

### **Reasons for Decision – Exempt material**

Section 47E(d) provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The documents in scope of items 1 and 2 of your request contain the advice and opinions of the eSafety Commissioner on the matters covered by the Roadmap which have been submitted to the Minister for her consideration. This material will be subject to further approval processes of government. I find that the disclosure of this material would impede the Commissioner's ability to provide confidential and complete advice to the Minister in future, including the future handling of the issues covered by the Roadmap, for similar reasons to those supporting the confidentiality of the Cabinet process. The disclosure of this information would adversely affect the effectiveness of this process as a support to sound decision-making by the Minister and government. As advising the Minister is one of the Commissioner's core functions as an independent statutory officer under the Online Safety Act 2021, I consider disclosure would have a substantial adverse effect on the Commissioner's confidential consultation processes with the Minister's office.

I therefore find the disclosure of the material in scope of items 1 and 2 of your request would have a substantial adverse effect on the proper and efficient conduct of the operations of eSafety. That material is accordingly conditionally exempt under section 47E(d) of the FOI Act.

### **Public interest considerations**

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless release would, on balance, be contrary to the public interest. Section 11B(3) sets out matters favouring access that must be taken into account in considering whether release is in the public interest.

For all of the material identified above as conditionally exempt, I consider that disclosure would generally promote the objectives of the FOI Act, would enhance the scrutiny of government decision making and could inform debate on matters of public importance.

Against release, I find a public interest in preserving confidential government processes in circumstances where disclosure of the relevant material would undermine the effectiveness of those processes, and inhibit the free and unqualified advice of agencies to their ministers and the government. In particular, I find the disclosure of the material in scope of items 1 and 2 of your request would be contrary to the public interest in

protecting the confidential deliberative process of providing advice on matters of significance and sensitivity as one of eSafety's core advisory functions. Disclosure of the relevant material would substantially and adversely impact eSafety's operations as an agency by reducing opportunities to influence and advise ministers and government in a full and unqualified manner in relation to policy matters.

On balance, I consider there are overriding public interest factors against disclosure of the relevant material in scope of items 1 and 2 of your request. I have therefore decided this material is exempt under section 47E(d) of the FOI Act.

I have not taken into account any of the 'irrelevant factors' set out in section 11B(4).

I note for your awareness that the Hon Michelle Rowland MP, Minister for Communications has recently publicly said the government would release the Roadmap in the near future.

### **Further information on material released**

As noted above, the documents I am releasing to you are listed in the schedule, except for the material falling under item 8 of your request, which I have provided a link to above. The following is some contextual information about the material released.

Item 1 is a list of third parties eSafety reached out to for consultation, in answer to item 3 of your request. As indicated on the list, eSafety did not end up speaking with all of these stakeholders. eSafety also provided an opportunity on its website for stakeholders to register their interest in being consulted. Those stakeholders who registered interest were provided with an opportunity to complete a written survey, and have been included in the list as well. I have excluded the names of individuals as that would have required consultation and you removed material requiring consultation from the scope of your request. I have also removed one consultee who withdrew from the process, as, again, inclusion of that name would have required consultation.

Item 2 is a list of research or independent testing commissioned by eSafety, in answer to item 4 of your request.

Item 3 is a list of material released in answer to item 5 of your request. The list includes material provided to eSafety or referenced in submissions made in response to the call for evidence, as well as peer-reviewed research or grey literature found as part of eSafety's own literature review. As you will see when you review the material, it represents a range of approaches to and ideas about online pornography, age verification and complementary educational and technological measures. We do not believe the list could be divided into material that either 'supports' or 'contradicts' the Roadmap's recommendations. In developing the Roadmap, we have endeavoured to assess a wide range of materials and to take a balanced, evidence-based approach.

Item 4 is the bibliography for the Roadmap, meaning the references cited in the Roadmap itself, in answer to item 6 of your request.

Item 5 is a list of vendors released in answer to item 7 of your request. The vendors in this list were not all referenced in the Roadmap but were contacted by the independent test lab as part of its product assessment to inform the Roadmap. The Roadmap does not recommend specific vendors. It does discuss categories of technologies available. Item 5 is a list of the vendors who were contacted by the independent test lab as part of its assessment to inform the roadmap. Additional safety technology vendors participated in our consultation (see item 1).



If you have any questions regarding this decision, please contact me at [foi@esafety.gov.au](mailto:foi@esafety.gov.au).  
A statement of your rights of review is attached.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kelly Tallon".

Kelly Tallon  
Manager

**Attachments**

1. Schedule of documents
2. Rights of Review

### SCHEDULE OF DOCUMENTS

Number	Pages	Description	Decision on Access
1.	1	List of third parties eSafety reached out to for consultation	Release in full; irrelevant material excluded under s 22
2.	1	List of research or independent testing	Release in full
3.	2	List of material from call for evidence and literature review	Release in full
4.	13	Roadmap bibliography	Release in full
5.	1	List of vendors the independent test lab reached out to for assessment	Release in full; irrelevant material deleted under s 22