



Australian Government
Classification Board

Our reference: FOI 23-239

John Smith

Via email: foi+request-10154-80fc31f1@righttoknow.org.au

Dear John,

Decision on your Freedom of Information Request

I refer to your request of 13 April 2023 to the Classification Board (the Board), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

1 Your request

You requested access to:

“All documents relating to the classification of the publication 'Gender Queer: A Memoir' (File number: T23/18990; Classification number: CLAS-108096), including, but not limited to, classification reports, board reports, classifier blues/censor notes and correspondence (both physical and electronic); and All documents relating to the decision to call in the aforementioned publication for classification; and Any correspondence from the Queensland Police Service relating to the aforementioned publication.”

2 Authority to make decision

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

3 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 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

4 Decision

I have identified 16 documents that are relevant to your request. These documents were in the possession of the Board when your request was received.

I have decided to:

- grant access in full to relevant information in 10 documents
- grant partial access to 6 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to these 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 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 parts of the documents marked 's47F' 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 personal information that is conditionally exempt is not well known
 - the conditionally exempt personal information is not available from publicly accessible sources
 - the individuals whose personal information is contained in the document 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 personal information is included in the document as a result of their employment circumstance
 - 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.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' 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 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I 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 inform debate on a matter of public importance
- would not 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
 - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the personal information would not provide you with any further insight into the workings of government beyond that substantive information

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.

5.3 Section 22 – deletion of irrelevant and/or exempt material

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

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

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.

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 Board may also publish the released material on its Disclosure Log. The Board will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the Disclosure Log can be found here: www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log.

Further information

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) assists the Board with the processing of FOI requests. If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely



Fiona Jolly
Director
Classification Board
9 June 2023

SCHEDULE OF DOCUMENTS FOI 23-

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	4	24/03/2023	Gender Queer Blues 1	Access granted in full to relevant information	s22
2.	6	22/03/2023	Gender Queer Blues 2	Access granted in full to relevant information	s22
3.	6	27/03/2023	Gender Queer Blues 3	Access granted in full to relevant information	s22
4.	2	N/A	Application Information	Access granted in part	s47F
5.	2	03/04/2023	Classification Certificate	Access granted in part	s22 s47F
6.	6	03/04/2023	Decision Report	Access granted in full to relevant information	s22
7.	4	04/05/2023	Classification Inquiry	Access granted in part	s22 s47F
8.	2	17/03/2023	Call-in Notice	Access granted in part	s22 s47F
9.	1	01/03/2023	Classification Inquiry	Access granted in part	s22 s47F
10.	2	17/03/2023	Classification Inquiry	Access granted in part	s22 s47F
11.	3	14/03/2023	Email chain regarding Gender Queer	Access granted in full to relevant information	s22
12.	1	20/03/2023	Email chain regarding Gender Queer	Access granted in full to relevant information	s22
13.	9	14/03/2023	Email chain regarding Gender Queer	Access granted in full to relevant information	s22
14.	5	09/03/2023	Email chain regarding Gender Queer	Access granted in full to relevant information	s22
15.	5	09/03/2023	Email chain regarding Gender Queer	Access granted in full to relevant information	s22
16.	7	15/03/2023	Email chain regarding Gender Queer	Access granted in full to relevant information	s22

YOUR REVIEW RIGHTS

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

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 Classification Board 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/
- via email to 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.