

13 June 2023

Mr Alex Pentland

By email: foi+request-10155-729e2f81@righttoknow.org.au

Dear Mr Pentland,

FOI request - Decision on access – FOI 23118

I refer to your request under the *Freedom of Information Act 1982* received on 13 April 2023.

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

Background

On 13 April 2023, you requested access to the following documents:

1. All complaints received by the eSafety Commissioner (the Commissioner) in relation to:
 - a) the website [actionforalice2020.com](https://www.actionforalice2020.com)
 - b) the Action for Alice 2020 facebook page (<https://www.facebook.com/Action-for-Alice-2020-111304870409274>)
 - c) the actionforalice2020 tiktok account (<https://www.tiktok.com/@actionforalice2020>)
 - d) the @actionforalice twitter page (<https://twitter.com/actionforalice>)
 - e) the Action for Alice 2020 Youtube Page 9
<https://www.youtube.com/channel/UCqjT2qU0wH7HH10a-vVYINg>
2. All notices given by the Commissioner under the Online Safety Act 2021 to:
 - a) the website [actionforalice2020.com](https://www.actionforalice2020.com)
 - b) the Action for Alice 2020 facebook page (<https://www.facebook.com/Action-for-Alice-2020-111304870409274>)
 - c) the actionforalice2020 tiktok account (<https://www.tiktok.com/@actionforalice2020>)
 - d) the @actionforalice twitter page (<https://twitter.com/actionforalice>)
 - e) the Action for Alice 2020 Youtube Page 9
<https://www.youtube.com/channel/UCqjT2qU0wH7HH10a-vVYINg>
3. All correspondence between the Commissioner and/or staff assisting the Commissioner and:
 - a) the website [actionforalice2020.com](https://www.actionforalice2020.com)
 - b) the Action for Alice 2020 facebook page (<https://www.facebook.com/Action-for-Alice-2020-111304870409274>)
 - c) the actionforalice2020 tiktok account (<https://www.tiktok.com/@actionforalice2020>)
 - d) the @actionforalice twitter page (<https://twitter.com/actionforalice>)
 - e) the Action for Alice 2020 Youtube Page 9
<https://www.youtube.com/channel/UCqjT2qU0wH7HH10a-vVYINg>

Decision

I have identified 4 documents which fall within the scope of item 1 your request. There were no documents in scope of items 2 and 3.

I have decided that parts of each document are exempt under section 47F of the FOI Act and have therefore decided to release the documents in part.

Pursuant to section 22 of the FOI Act, I have also redacted information that is irrelevant to the scope of your request. Further to our acknowledgement on 28 April 2023, I have treated the personal information of public servants as irrelevant to your request.

Material taken into account

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

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

Reasons for Decision

The attached schedule of documents provides a description of each document and my decision on access for each one. The reasons for my decisions are outlined below.

I have referred to section 22 of the FOI Act in the schedule, to indicate some parts of documents are either not relevant or out of scope of your request.

Exemptions

Section 47F of the FOI Act – 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 of any person.

‘Personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable (see section 4 of the FOI Act and section 6 of the Privacy Act 1988).

The documents in scope of your request contain the personal information of the individuals who made the complaint. I consider that disclosure of this personal information would be unreasonable because it is not well known, not available from public sources and these complainants are not known to have made the complaints. I also consider that a person who makes a complaint to eSafety has a reasonable expectation that their identity will be treated confidentially.

I therefore consider that the parts of the documents that would identify the complainants in these matters to be conditionally exempt under section 47F 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 and could enhance the scrutiny of government decision making.

Against this, I consider that there is a public interest in maintaining the confidentiality of the complaint process for eSafety, as failing to do so is likely to dissuade complainants,

particularly more vulnerable complainants who have already been subject to harm from the online activities of others. I consider that the public interest in maintaining this confidentiality outweighs the public interest in release of this information, and therefore find that release of this information would not be in the public interest.

I therefore find that parts of the documents are exempt. In reaching this conclusion, I have not taken into account any of the 'irrelevant factors' set out in section 11B(4).

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

Yours sincerely,



Luke Boon
Executive Manager, Investigations

Attachments

1. Schedule of documents
2. Rights of Review

SCHEDULE OF DOCUMENTS

Number	Date	Size	Description	Decision on Access	Exemptions or deletions
1.	8/11/2022	2 pages	Complaint 1	Release in part	s 47F, s 22
2.	8/11/2022	5 pages	Complaint 1 details	Release in part	s 47F, s 22
3.	28/2/2023	2 pages	Complaint 2	Release in part	s 47F, s 22
4.	28/2/2023	3 pages	Complaint 2 details	Release in part	s 47F, s 22