



Australian Government
Classification Board

Our reference: FOI 23-249

Ryan J. Austin

By email: foi+request-10175-4ee5784b@righttoknow.org.au

Dear Mr Austin

Decision on your Freedom of Information Request

I refer to your request of 19 April 2023, to the Classification Board, seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

1 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.

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

3 Scope of your request

You requested access to:

any and all documents relating to the classification history of the video game "Omega Labyrinth Z" (T18/0219)

On 5 May 2023, you agreed to revise the scope of your request to the following documents relating to the title:

- Any Classification Board's Blue notes
- Classification Board Decision Report and
- Classification Board Classification Certificate

4 Decision

I have identified five 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 partial access to five 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 parts of the documents are set out below.

5.1 Section 37 - documents affecting enforcement of law and protection of public safety

Section 37(2)(c) of the FOI Act provides that a document is an exempt document if its disclosure would, or could reasonably be expected to prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

Paragraph 5.1116 of the FOI Guidelines states:

- 5.116 The words 'public safety' do not extend beyond safety from violations of the law and breaches of the peace. The AAT has observed that 'public safety' should not be confined to any particular situation, such as civil emergencies (bushfires, floods and the like) or court cases involving the enforcement of the law. The AAT also noted that considerations of public safety and lawful methods will be given much wider scope in times of war than in times of peace.

In relation to the test *would or could reasonably be expected*, paragraphs 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

The Board makes decisions relating to the classification of publications, films and computer games under the *Classification (Publications, Films and computer Games) Act 1995* (the Classification Act), the *National Classification Code* (the Code) and the *Guidelines for the Classification of Films and Computer Games 2005* (the Guidelines).

Paragraph 1 of the Code provides that:

1. Classification decisions are to give effect, as far as possible, to the following principles:
 - (a) adults should be able to read, hear, see and play what they want;
 - (b) minors should be protected from material likely to harm or disturb them;
 - (c) everyone should be protected from exposure to unsolicited material that they find offensive;
 - (d) the need to take account of community concerns about:
 - (i) depictions that condone or incite violence, particularly sexual violence; and
 - (ii) the portrayal of persons in a demeaning manner.

Paragraph 3, Item 1 of the Code provides that films that depict, express or otherwise deal with specified matters; describe or depict in a way that is likely to cause offence to a reasonable adult; or promote incite or instruct in matters of crime of violence, should not be classified and be Refused Classification (RC).

Each state and territory has classification enforcement legislation to complement the Classification Act and provides for offences in relation to the exhibition and sale of RC films.

The documents contain detailed descriptions of the content of the film being reviewed for classification purposes and reflect the reasons for the Board's decision to not classify the film and for it to be RC.

I am satisfied that disclosure of parts of the documents marked 's37(2)(c)' would, or could reasonably be expected to, prejudice the maintenance or enforcement of lawful methods for the protection of public safety. I am further satisfied that disclosure of this information would result in real, significant or the material possibility of prejudice to the protection of maintenance or enforcement of lawful methods for the protection of public safety.

For the reasons outlined above, I decided that parts of the documents marked 's37(2)(c)' are exempt from disclosure under section 37 of the FOI Act.

5.2 Section 47E - Documents affecting certain operations of agencies

Section 47E of the FOI Act 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.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the Board's 'proper and efficient' operations, that is, the Board is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

As outlined above, the Board is responsible for assessing and making decisions relating to the classification of publications, films and computer games under the Classification Act. Disclosure of the descriptive content of the film that depicts, expresses or otherwise deals with matters specified in the Code; and/or describes or depicts film content in a way that is likely to cause offence to a reasonable adult; or promotes, incites or instructs in matters of crime of violence, would disclose information that the Board has decided should not be classified under the Classification Act and should be Refused Classification (RC). The disclosure of that descriptive content would subvert the classification process by revealing content likely to cause offence to a reasonable adult.

I am satisfied that parts of the documents marked 's47E(d)' contain information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on the Board's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the Board conducts those operational activities.

For the reasons outlined above, I decided that parts of the documents marked 's47E' are conditionally exempt from disclosure under section 47E 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 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' an individual.

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

For the reasons outlined above, I decided that the part of the documents marked 's47F' is 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.

5.4 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 not 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 security, law enforcement, public health or public safety
- could reasonably be expected to prejudice the Board's responsibilities relating to the assessment of publications, films and computer games under the Classification Act, with disclosure of the conditionally exempt material undermining the decision made to refuse classification to the film

- would subvert the purpose for which this film was refused classification by revealing content likely to cause offence to a reasonable adult; or promote, incite or instruct in matters of crimes of violence
- could reasonably be expected to prejudice the protection of an individual’s 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.

5.5 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. 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. 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.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information 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.

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) provides administrative assistance to the Board in relation to 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

A handwritten signature in black ink, appearing to read 'Fiona Jolly', written in a cursive style.

Fiona Jolly
Director
Classification Board

SCHEDULE OF DOCUMENTS FOI 23-249

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	1-Feb-18	Omega Labyrinth - Board Blues	4	Partial access	s22 s37(2)(c) s47E(d)
2.	1-Feb-18	Omega Labyrinth - Board Blues	4	Partial access	s22 s37(2)(c) s47E(d)
3.	24-Sep-04	Omega Labyrinth - Board Blues	7	Partial access	s22 s37(2)(c) s47E(d)
4.	2-Feb-18	Omega Labyrinth - Classification Board Decision Report	4	Partial access	s22 s37(2)(c) s47E(d)
5.	2-Feb-18	Omega Labyrinth - Classification Certificate	1	Partial access	s22 s47F

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.