

Our ref: FOI-2023-10048

7 July 2023

Mr James Andrew Douglass

By email to: foi+request-10187-d0aeecd5@righttoknow.org.au

Dear James Andrew Douglass

Freedom of Information request – Part access decision

I refer to your request of 20 April 2023 made to this Office under the *Freedom of Information Act 1982* (FOI Act). Your request was for access to documents in the following terms:

Under the FOI Act I request access to documents in the possession of the Office of the Commonwealth Ombudsman relating to Iain Anderson's appointment as Commonwealth Ombudsman.

I apologise for the delay in processing your request. On 19 May 2023 and again on 19 June 2023, this Office contacted you to advise of the delay and request additional time to process your request.

On 10 June 2023, you applied for Information Commissioner review (IC review) of the deemed refusal of access decision, which occurred on 29 May 2023.

Decision

I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests. This letter constitutes my notice of decision. I make this decision varying the access refusal decision of 29 May 2023 under s 55G(1) of the FOI Act.

The Office has conducted searches of its electronic case management, records management and email communication systems for any documents this Office holds that are within the scope of your request.

I have identified six (6) documents, totalling 11 pages that are within the scope of your request.

I have decided:

- To grant access to 3 documents in full, and
- To grant access to 3 documents in part.

My reasons for the decision and findings of fact are set out at **Attachment A**.

A schedule setting out my decision in relation to the relevant documents is at **Attachment B**.

Information about your review rights is at **Attachment C**.

Given the IC review application, our Office will notify the Information Commissioner of its revised decision.

Contacts

You may contact me via email at information.access@ombudsman.gov.au or via telephone on 1300 362 072.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mulipola', is positioned above the typed name.

Steven Mulipola
Senior Legal Officer
Legal Team

Influencing systemic improvement in public administration

Reasons for decision – FOI 2023-10048

Material taken into account

In making my decision I had regard to the following:

- the terms of your request dated 20 April 2023
- the content of the documents to which you sought access
- consultations with relevant Ombudsman officers
- consultations with Australian government agencies, including the Attorney-General's Department
- relevant provisions of the FOI Act
- Office of the Australian Information Commissioner's (OAIC) Freedom of Information Guidelines available at www.oaic.gov.au (the Guidelines), and
- relevant court, Administrative Appeal Tribunal and Australian Information Commissioner decisions.

Findings of fact and reasons for decision

Where the schedule of documents at **Attachment A** indicates that an exemption has been applied to a document, or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document, or part of that document, are set out below.

Conditional exemption – certain agency operations: s 47E

Section 47E of the FOI Act relevantly provides that:

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.*

Ombudsman staff names, direct phone numbers and email addresses

The documents contain the names, direct phone numbers and direct email addresses of Ombudsman and Remuneration Tribunal (Tribunal) staff. The Ombudsman and Tribunal have established contact points and procedures in place for members of the public to communicate with it. Disclosure of direct contact details would undermine this and could impede the Ombudsman's and Tribunal's functions. The OAIC has found that the direct contact details of Ombudsman staff, including names, direct phone numbers and direct email addresses are conditionally exempt under s 47E(d) of the FOI Act: *ABK and Commonwealth Ombudsman* [2022] AICmr 44.

Where so indicated on the Schedule of Documents, I have decided that the documents are conditionally exempt under subsection 47E(c) and/or alternatively s 47E(d) of the FOI Act.

Public interest

Section 11A(5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be 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.

Factors favouring disclosure include that disclosure would:

- Promote the objects of the FOI Act, including to:
 - 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
 - reveal the reason for a government decision and any background or contextual information that informed the decision
 - enhance the scrutiny of government decision making; and
- inform debate on a matter of public importance.

Factors against disclosure include that disclosure could:

- reasonably be expected to prejudice the protection of an individual’s right to privacy
- reasonably be expected to affect the ability of staff members to fulfil their duties
- have a substantial adverse effect on the management of Office personnel
- reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman (see FOI Guidelines 6.22(l))

I have considered the factors for and against disclosure and find, on balance, that the factors against disclosure outweigh the factors in favour of disclosure. I have given greater weight to the proper and efficient conduct of Ombudsman’s and Tribunal’s functions and processes not being impeded. Disclosure would not at this time be in the public interest.

Conditional exemption – personal privacy: s 47F

Section 47F of the FOI Act conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.

Personal information

‘Personal information’ is relevantly 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.

The documents contain personal information in the form of staff names and contact details (including full name, direct phone number and direct email address) and signatures of Tribunal staff.

I am satisfied that the relevant information is personal information as defined in s 4 of the FOI Act. The individuals are identifiable or reasonably identifiable from the relevant information.

Disclosure unreasonable

A document will be conditionally exempt if its disclosure would involve the 'unreasonable' disclosure of personal information. 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.

I find that 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, particularly direct staff contact details. The relevant names and position titles are specific to the relevant individuals.

There is no presumption that inclusion of full names of staff on documents increases transparency and the objects of the FOI Act: *Warren; Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 467, [83]. Disclosure of a public servant's personal information can be unreasonable in accordance with s 47F of the FOI Act. I find that it would be unreasonable in this case.

In my view, disclosure of non-senior executive staff member's names and direct contact details, including email addresses and phone numbers, could subject the relevant staff to the possibility of inappropriate contact from complainants or other individuals. The contact details of junior staff are generally not available on public directories. The Office has established contact points for receiving public enquiries. The FOI Act does not restrict any further dissemination of information released under the FOI Act once released. The staff involved have not consented to the disclosure of their personal information or contact details.

Accordingly, where indicated on the Schedule below, I have formed the view that the names, signatures and direct contact details of APS staff is conditionally exempt under s 47F(1) of the FOI Act. In my view, release would involve the unreasonable disclosure of personal information.

Public interest

In deciding whether access should be given to this information on the basis of public interest I have taken a number of matters into account. These matters include the public interest factors for and against disclosure as outlined in 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.

The following factors favour disclosure:

- Access would promote the objects of the FOI Act, as explained above;

The following factors mitigate against disclosure:

- could reasonably be expected to prejudice the protection of a person's right to privacy;
- could reasonably be expected to impede the Office's work health and safety obligations under the *Work Health and Safety Act 2011* (Cth);
- could reasonably be expected to prejudice security, law enforcement, public health or public safety
- could reasonably be expected to result in inappropriate contact resulting in inefficiencies in this Office.

I have given more weight to the protection of an individual's right to privacy, the proper means of contact for agency officers, and relevant work, health and safety obligations. Under subsection 11A(5) of the FOI Act, I have concluded that the identified documents are not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

Deletion of exempt/irrelevant matter: s 22

Section 22 of the FOI Act allows an agency to delete exempt or irrelevant matter from a document relevant to an applicant's FOI request and to provide an applicant with access to an edited copy, where it is reasonably practicable to prepare the edited copy: s 22(1)(c) of the FOI Act.

As I have found that the document contains information which is irrelevant to the request, I have deleted that information accordingly. You will be provided with access to an edited version of the document.

Schedule of documents – Freedom of Information Request FOI-2023-10048

Doc No.	Date	Pages/ Folio	Description of Document	Decision on access	Exempt or irrelevant material
1.	10/06/2021	4	Candidate Information Pack	Full access	
2.	Undated	1	Commonwealth Ombudsman – Advertisement	Full access	
3.	13/04/2022	1	Attorney-General’s Department – Cost Recovery for Ombudsman Appointment Process – Invoice 6129006	Part access	Conditionally exempt under s 47E(c) substantial adverse effect on management of personnel and s 47E(d) (substantial adverse effect on operations of agencies) Conditionally exempt under s 47F (unreasonable disclosure of personal information)
4.	21/07/2022	1	Commonwealth Ombudsman – Instrument of Appointment 2022	Full access	
5.	21/07/2022	2	Internal email – appointment of Iain Anderson as Ombudsman	Part access	Conditionally exempt under s 47E(c) substantial adverse effect on management of personnel and s 47E(d) (substantial adverse effect on operations of agencies)

Schedule of documents – Freedom of Information Request FOI-2023-10048

Doc No.	Date	Pages/ Folio	Description of Document	Decision on access	Exempt or irrelevant material
					Conditionally exempt under s 47F (unreasonable disclosure of personal information)
6.	21/07/2022	2	Intranet Post: Our New Ombudsman – Iain Anderson	Part access	<p>Conditionally exempt under s 47E(c) substantial adverse effect on management of personnel and s 47E(d) (substantial adverse effect on operations of agencies)</p> <p>Conditionally exempt under s 47F (unreasonable disclosure of personal information)</p>

REVIEW RIGHTS

Internal review

You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be changed. Applications for internal review can be made:

- via email to information.access@ombudsman.gov.au
- by mail to Commonwealth Ombudsman GPO Box 442 Canberra ACT 2601

If you choose to seek an internal review, you will afterward have a right to apply for Information Commissioner review (IC review) of the internal review decision.

Information Commissioner review or complaint

You also have the right to seek IC review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 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 Ombudsman's Office 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 <https://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 at its website: www.oaic.gov.au/freedom-of-information/foi-review-process.