



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2023/126

Mr Oliver Smith

By email: foi+request-10210-db1aed10@righttoknow.org.au

Dear Mr Smith

I refer to your request to the Department of the Prime Minister and Cabinet (the Department) of 2 May 2023, seeking access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

Scope of request

You set out your request in the following terms:

... all documents provided to members of National Cabinet in relation to any discussion or agenda item about Net Overseas Migration or Australia's population that took place at the National Cabinet meeting held on 28 April 2023.

Request decided out of time

A decision on your request was due 3 July 2023. Unfortunately the Department was unable to complete the processing of your request by the due date. In these circumstances the Department follows the advice in the Information Commissioner Guidelines at paragraph 3.163.

As a result review rights for your request can be direct to the Information Commissioner, information on how to submit a review is at the bottom of this letter.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Material taken into account

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- consultation with third parties
- the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines)

Documents in scope of request

The Department has identified 2 documents that fall within the scope of your request.

Decision

I have decided to grant access in part, with exempt and irrelevant material deleted. The Schedule of Documents at **Attachment A** set out the decision with respect to each document.

The material subject to access is enclosed.

Reason for decision

My findings of fact and reasons for deciding that certain information is irrelevant are set out below.

1. Deliberative process

Section 47C of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth.*

The document found to contain deliberative material includes a National Cabinet Paper and its attachment. The purpose of this paper is to brief members of National Cabinet for their deliberations and contains advice from relevant agencies. I am satisfied the artefacts exemplify the 'thinking processes' and 'deliberative process' as discussed in the FOI Guidelines¹.

¹ 6.58-6.62 of the FOI Guidelines

In reaching this decision I have had regard to the exceptions set out in section 47C(2) and (3) of the FOI Act and the discussion within the FOI Guidelines on these matters. In the circumstances these are not applicable.

I am satisfied that the document contains deliberative material and the material, as referenced in the Schedule of Documents is exempt under section 47C of the FOI Act.

2. Public interest

The FOI Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest². In determining whether its disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors.

I have decided that material as discussed above is conditional exempt, thus I am now required to consider the public interest factors, in doing so I have not taken into account the irrelevant factors as set out in s 11B(4) of the FOI Act.

Factors favouring access

I have noted the objects of the FOI Act³ and the factors favouring access as listed in s 11B(3) of the FOI Act. Having regard to the material before me and the circumstances of the material found to be conditionally exempt, I find the following relevant:

- access would promote the objects of the FOI Act⁴
- access may inform debate on a matter of public importance
- access may promote effective oversight of public expenditure

Factors favouring non-disclosure

The FOI Act does not set out any public interest factors against disclosure and require me to have regard to the FOI Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest⁵.

The FOI Guidelines contain a non-exhaustive list of factors that, depending on the circumstances may weigh against disclosure. I consider the relevant factors include:

² section 11A(5) of the FOI Act

³ section 3 of the FOI Act

⁴ section 11B(3)(a) of the FOI Act

⁵ section 11B(5) of the FOI Act

- disclosure of the deliberative aspects of the agency advice to government and the Prime Minister, would affect trusted relationships and inhibit the inclusion of full and frank advice to briefing materials

I have further considered, in balancing these factors, the extent to which the exempt material would go towards the public interest. In the circumstances I find the pertinent facts about the outcomes and decisions of National Cabinet has been made public, as per the terms of reference for publication of such material on the Federation website.

I have balanced these factors and find the factors favouring non-disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the deliberative material would be contrary to the public interest.

3. Deletion of irrelevant matter

Section 22 of the FOI Act provides that the Department may prepare an edited copy of documents, to remove information reasonably regarded as irrelevant to the request.

I have found that the documents contain material that is irrelevant to your request. I have decided to modify the documents by deleting the irrelevant material under section 22(1)(a)(ii) of the FOI Act. The remainder of the documents have been released to you.

Review rights

If you disagree with my decision you may apply for review with the Information Commissioner.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter.

More information about Information Commissioner review is available [here](#).⁶

FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. More information about complaints is available [here](#).⁷

⁶ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

⁷ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at foi@pmc.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "Hope Peisley". The signature is written in a cursive, slightly slanted style.

Hope Peisley
Assistant Secretary
Commonwealth-State Relations Branch
Department of the Prime Minister and Cabinet
23 January 2024