



OFFICIAL

## Freedom of Information (FOI) request

### Notice of Decision

Reference: FOI/2023/138

To Gemma

Email: [foi+request-10300-04b4d5b6@righttoknow.org.au](mailto:foi+request-10300-04b4d5b6@righttoknow.org.au)

Dear Gemma

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act), received on 10 May 2023.

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:

1. *Please provide a copy of the department's current procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions that is currently in force.*
2. *Please provide a copy of the department's current social media policy (which covers departmental use and/or private use by employees in an individual capacity).*
3. *Provide a provide a copy of the department's current guidance material which is available for employees to make informed decisions about their private social media use.*
4. *Provide a copy of guidance/information provided to your employees regarding expectations on their conduct in the lead up to the Voice Referendum.*
5. *Please advise:*
  - A) *In the last 6 months, have you received a complaint regarding social media post made by an employee?*
  - B) *In the last 6 months, how many complaints have you received regarding social media post made by your employees?*

On 21 May 2023, the Department advised you that the Procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions is available on the Department's website at:

[Procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions | PM&C \(pmc.gov.au\)](#)

As the document was provided to you under administrative access, and through the provision of the above link, Part 1 of your request is not included as part of the FOI decision. Material maintained by agencies for reference purposes and which is publicly available is not subject to the FOI Act (section 4 of the FOI Act refers).

## 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
- searches undertaken by the Department
- the documents relevant to your request
- the FOI Act
- the Guidelines issued by the Information Commissioner<sup>1</sup> (the FOI Guidelines)

## Documents in scope of request

The Department has identified three documents that fall within the scope of Parts 2 to 4 of your request. These documents are set out in the Schedule of Documents at **Attachment A**.

Further information relating to the Department's use of social media and moderation guidelines can be found on the Department's website at: [Social media | PM&C \(pmc.gov.au\)](#)

There were no documents found to be relevant to Part 5 of your request.

## Decision

### Part 5

I have decided to refuse Part 5 of your request under s 24A(1) of the FOI Act, on the grounds that the Department has taken all reasonable steps to locate the documents you have requested, and those documents do not exist.

### Reason for decision

My findings of fact and reasons for refusing the request is set out below.

---

<sup>1</sup> s 93A of the FOI Act

Section 24A(1) of the FOI Act provides that:

*An agency or Minister may refuse a request for access to a document if:*

*(a) all reasonable steps have been taken to find the document; and*

*(b) the agency or Minister is satisfied that the document:*

*(i) is in the agency's or Minister's possession but cannot be found; or*

*(ii) does not exist.*

In determining what the FOI Act means with respect to 'all reasonable steps', I have had regard to the Guidelines which discusses the meaning of 'reasonable' in s 24A(1)(a). It is not designed to go beyond the limit assigned by reason, not to be extravagant or excessive, rather to be moderate and of such an effort to be appropriate or suitable to the circumstances<sup>2</sup>.

The Department has conducted searches, for any relevant records that would meet the terms of Part 5 of your request. There were no documents found to be in the possession of the Department. That is, the Department has not received any complaints regarding social media posts made by an employee.

Based on my knowledge of the subject matter connected to your FOI request, and in my role as Chief People Officer, People Branch, I am satisfied that the Department does not hold the documents you have requested.

I am satisfied reasonable steps were taken to find the documents, however no documents relevant to your request have been identified.

Accordingly, I am refusing Part 5 of your request as documents do not exist.

Part 2 to 4

### **Reason for decision**

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

I have decided to grant access to two documents in full and one document in part, with exempt and irrelevant material deleted, on the basis that Document 2 contains information exempt under section 47E (Certain operations of agencies).

#### **1. Certain operations of agencies (section 47E(d) of the FOI Act)**

Section 47E(d) of the FOI Act provides that:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to...*

---

<sup>2</sup> 3.88 of the FOI Guidelines

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Paragraphs 6.101 and 6.103 of the FOI Guidelines state:

*For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.*

*An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material.*

Having regard to the nature of the specific information, I am satisfied that part of Document 2 contains information which, if disclosed, would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

The information consists of an operational email address used by the Department which is not publicly available. I consider that the disclosure of the email address would, or could reasonably be expected to, result in potential vexatious communication and public inquiries being received which would compromise the day to day operations of the Department. This is because the team that manages the email account is not resourced to triage and manage public communications. I note that there are established channels of communication available for media and members of the public to contact government agencies.

Accordingly, I am satisfied that these parts of the documents are conditionally exempt under section 47E(d) 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 interest<sup>3</sup>. 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.

As I have decided that part of Document 2 is conditionally exempt, 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, this includes:

---

<sup>3</sup> s 11A(5) of the FOI Act

- a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government*
- b) *access to the document could result in any person misinterpreting or misunderstanding the document*
- c) *the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made*
- d) *access to the document could result in confusion or unnecessary debate*

In applying the public interest, I have noted the objects of the FOI Act<sup>4</sup> 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 documents found to be conditionally exempt I am satisfied of the following:

- access would promote the objects of the FOI Act<sup>5</sup>
- access to the conditionally exempt information would not inform debate on a matter of public importance
- the subject matter within the conditionally exempt document does not seem to have the character of public importance, rather the matter has very limited scope and may only be of interest to a narrow section of the public
- the subject matter within the conditionally exempt documents does not offer any insights into public expenditure

The FOI Act does not set out any public interest factors against disclosure and require that agencies are to have regard to the FOI Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest<sup>6</sup>. The FOI Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the documents found to be conditionally exempt, may weigh against disclosure.

The main factor against disclosure in this case is that disclosure of the information would affect the ability of the Department's IT Security team to manage their day to day operations if the email account was made public, as disclosure of the email address would or could result in potentially vexatious communication and public inquiries being received, which the Department is not resourced to manage.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the conditionally exempt part of requested document would be contrary to the public interest.

### **3. Deletion of irrelevant matter**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would be reasonably regarded as irrelevant to the request, it is possible for the Department to

---

<sup>4</sup> s 3 of the FOI Act

<sup>5</sup> s 11B(3)(a) of the FOI Act

<sup>6</sup> s 11B(5) of the FOI Act

prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonable be regarded as irrelevant to the request.

On 21 May 2023, the Department advised you of its policy to exclude the personal and direct contact details of officers not in the Senior Executive Service (SES) and any Ministerial staff, as well as any person's signature, and the mobile or direct numbers of SES officers, which are contained in documents that fall within the terms of an FOI request. This category of information is identified as irrelevant and documents can be modified by the Department to delete the irrelevant material.

Accordingly I am satisfied that parts of the document are irrelevant under section 22(1)(a)(ii) of the FOI Act. The remainder of the document has been released to you as it is relevant to your request.

## Review rights

If you disagree with my decision, you may apply for internal review or Information Commissioner review of the decision.

### Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days from the date it is received.

Applications for review should be sent to [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

### 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](#).<sup>7</sup>

## 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](#).<sup>8</sup>

---

<sup>7</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

<sup>8</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>

OFFICIAL

---

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

Yours sincerely

A handwritten signature in grey ink that reads "Melinda Bopping". The signature is written in a cursive, flowing style.

Melinda Bopping  
Chief People Officer  
People Branch  
Department of the Prime Minister and Cabinet  
7 June 2023