



19 May 2015

Mr Ben Fairless

Via email: [request-1043-4623bee6@righttoknow.org.au](mailto:request-1043-4623bee6@righttoknow.org.au)

Our reference: LEX 13290

Dear Mr Fairless,

### Your Freedom of Information Request – Decision

1. I refer to your request received by the Department of Human Services (the **department**) on 19 April 2015, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

‘Can I please have a copy of:

- all complaints/feedback/correspondence in relation to the decision to deny "conscientious objectors" of Vaccination access to Government money
- Any response provided by the department in relation to those complaints/feedback/correspondence
- Any internal discussion in relation to the complaints/feedback/correspondence’

2. I am an authorised decision-maker under section 23(1) of the FOI Act.

### Document

3. The department has identified 5 documents (totalling 7 pages) falling within the scope of your freedom of information (**FOI**) request. The documents are detailed in the Schedule of Documents (the **Schedule**) at Attachment B.

### Decision

4. For the reasons discussed below, I have decided to:
  - grant access in full to documents 2, 4 and 5; and
  - grant access in part to documents 1 and 3.
5. I have decided that parts of document 1 and 3 contain material that is conditionally exempt under subsection 47F(1) of the FOI Act because release would involve the unreasonable disclosure of personal information about a person other than you and, pursuant to subsection 11A(5) of the FOI Act, is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.
6. The documents for release are included with this correspondence. Details on the application of these exemptions to the documents are set out in the schedule of documents (the **Schedule**) at Attachment B.

7. I note that you have requested that the documents be provided to you in their “original format i.e. either in Microsoft Word or HTML (where received online or via email)” and that the department not use PDFs. It is the department’s policy to provide FOI applicants with copies of documents in PDF format, to minimise fraud and ensure that applicants do not modify released documents for personal and/or unauthorised use.
8. Exempt and irrelevant information has been deleted in the documents in accordance with section 22 of the FOI Act. In particular, on 21 April 2015, the department acknowledged the receipt of your FOI request and indicated that staff names, direct contact details and personal log-on identifiers would be considered out of the scope of your request. You did not provide any further submissions to the department in relation to this point. Accordingly, this information has been deleted from the documents under section 22 of the FOI Act.

### Information Considered

9. In reaching my decision, I have considered:
  - the terms of your FOI request (dated 19 April 2015);
  - documents falling within the scope of your request;
  - the FOI Act;
  - factors relevant to my assessment of whether or not disclosure of certain pages would be in the public interest;
  - consultations with departmental officers about the nature of the documents and the department’s operating environment and functions; and
  - guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**).

### Reasons for the decision

10. As set out in my decision above, certain documents within the scope of the request are exempt under the FOI Act. My reasons for the decision are discussed below.

#### Section 47F – Public Interest conditional exemptions – personal privacy

11. I have applied section 47F of the FOI Act to documents 1 and 3.

#### *Personal information*

12. The document contains the names, personal details and opinions of third parties.
13. The term ‘personal information’ is defined in section 4(1) of the FOI Act (by way of reference to section 6(1) of the *Privacy Act 1988*), as follows:

‘**personal information** means 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.’

14. Further, paragraph 6.117 of the Guidelines provides the following relevant commentary in relation to the term 'personal information':

'6.117 Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

15. Given the above, I consider that the abovementioned documents contains the 'personal information' of third parties.

*Application of section 47F of the FOI Act to the documents*

16. Section 47F of the FOI Act provides:

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister 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.'

17. Paragraph 6.127 of the Guidelines provide the following commentary on the term 'unreasonable' as used in section 47F(1) of the FOI Act:

'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.'

18. As indicated above, the documents contain the personal information of third parties. I am satisfied that the disclosure of this personal information would be unreasonable, as:

- though I note that the terms of your request excludes the personal information of individual members of the public, the identities of the third parties could be ascertained from the documents;
- the third parties are not public figures and are not known to be associated with the matters dealt with in the documents;
- the third party information is private and not available in full or in part from publicly-accessible sources; and
- no public purpose would be achieved through release of this personal information.

19. Given the above, I find that the documents contain personal information which is conditionally exempt under section 47F(1) of the FOI Act, as set out in the Schedule.

### *Public interest considerations*

20. I have considered section 11A(5) of the FOI Act in relation to the document. Section 11A(5) of the FOI Act provides the following:

‘The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.’

21. As set out above, section 11A(5) of the FOI Act requires consideration of whether disclosure of the information in the document (which is conditionally exempt under section 47F(1) of the FOI Act) would be in the public interest.
22. When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken the following factors into account in favour of disclosure. In particular, I have considered the extent to which disclosure would:
- promote the objects of the FOI Act; and
  - inform debate on a matter of public importance.
23. However, I have weighed against these factors the following factors indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.
24. For the reasons set out above, I have decided that, in the circumstances, the public interest in disclosing the information in the document is outweighed by the public interest against disclosure. I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

### *Conclusion – application of the exemption*

25. For the reasons set out above, I am satisfied that the document contains information that is conditionally exempt under section 47F(1) of the FOI Act. I have also decided that, on balance, it would be contrary to the public interest to release this information.

### **Processing charge**

26. I note that this is a request for non-personal information. Considering the documents in this matter, I have estimated that the cost of processing your request is \$13.75. However, I have exercised my discretion to not issue a charge for this particular matter.

### **Further Information**

27. If you do not agree with my decision, you may request an internal review by the department or apply to the Information Commissioner for a review of the decision. [Attachment A](#) provides an information sheet that explains your rights of review under the FOI Act.
28. If you have any enquiries concerning this matter, please contact me on (02) 6223 4037 or send an email to the following email address: [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au).

Yours sincerely,

FOI Delegate  
FOI and Litigation Branch  
Department of Human Services

## **INFORMATION ON RIGHTS OF REVIEW**

### ***FREEDOM OF INFORMATION ACT 1982***

#### **Application for review of decision**

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (i) an internal review officer in the Department of Human Services; or
- (ii) the Information Commissioner.

#### **Internal Review**

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the address at the head of this letter.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

#### **Information Commissioner review**

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

<p>Online: <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>  Post: GPO Box 2999, Canberra ACT 2601  Fax: +61 2 9284 9666  Email: <a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a></p>	<p>In person: Level 8, Piccadilly Tower, 133  Castlereagh Street, Sydney NSW</p>
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If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

### **Complaints to the Commonwealth Ombudsman and Information Commissioner**

#### ***Commonwealth Ombudsman***

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.

#### ***Information Commissioner***

You may also complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: [www.oaic.gov.au](http://www.oaic.gov.au)

### **Office of the Australian Information Commissioner (OAIC) is disbanding**

**Please note:** The Australian Government announced as part of the 2014–15 Budget that the Office of the Australian Information Commissioner (OAIC) will be disbanded. The OAIC remains operational until further notice.

For further information on how the OAIC will deal with IC reviews and FOI complaints please visit their website at [www.oaic.gov.au](http://www.oaic.gov.au)

**Schedule of Documents**  
**LEX 13290 – Fairless**

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1	Various	Email to the Department	Access granted in part	s47F	Third party personal information deleted on page 1. Irrelevant information deleted under s22.
2.	2	Undated	Draft correspondence	Access granted in full		Irrelevant information deleted under s22.
3.	3	17/04/15	Email to the Department	Access granted in part	s47F	Third party personal information deleted on page 3. Irrelevant information deleted under s22.
4.	4 - 6	Various	Emails between the Department and third party	Access granted in full		Irrelevant information deleted under s22.
5.	7	Various	Extract of Complaints Database	Access granted in full		Irrelevant information deleted under s22.