



Australian Government
Attorney-General's Department

Our ref: FOI23/352; CM23/14283

8 December 2023

(Not the real) Bob Neil

By email: foi+request-10458-9d72920e@righttoknow.org.au

Dear applicant

Freedom of Information Request FOI23/352 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 12 July 2023, you requested access to:

Documents from the Parliamentary Document Management System which constitute the Parliamentary Document Record (PDR) for each item of Ministerial Correspondence below:

1. MC22-024299
2. MC23-005187

For the avoidance of doubt, requesting the whole electronic file relating to each item of correspondence, including (without limitation) drafts, revisions, internal and external referrals, records from all 'tabs' and 'panels', and all other documentary records which constitute the PDR Lifecycle.

On 17 July 2023, the department acknowledged the receipt of your request.

On 21 July 2023, you agreed to remove duplicate or incomplete emails, and the removal of junior staff names and their contact details.

On 8 August 2023, the department advised that there was an extension of time until 11 September 2023 to allow for consultations with third parties.

On 15 August 2023, you agreed to remove specified multiple copies of identical documents.

On 5 September 2023, you agreed a further revision of scope which included the removal of immaterial duplications of draft correspondence.

On 16 October 2023, the Office of the Australian Information Commissioner (OAIC) agreed to an extension of time until 24 October 2023 under s 15AC of the FOI Act to allow for the decision to be finalised.

My decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

I have identified 32 documents that fall within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents, arranging for comprehensive searches of relevant departmental electronic holdings and liaising with internal line areas that fall within the scope of your request.

In making my decision regarding access to the relevant documents, I have taken the following material into account:

- the terms of your request
- the content of the documents identified as within scope of your request
- the provisions of the FOI Act
- the responses from third parties consulted by the department under s 27 and s 27A of the FOI Act, and
- the FOI Guidelines issued by the Australian Information Commissioner (the Guidelines).

I have decided to refuse access to 16 documents. I have also decided to grant access in part to 16 documents.

Additional information

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

The schedule of documents at **Attachment B** sets out brief information about each document within the scope of your request and my decision in relation to access to each of those documents.

The statement of reasons at **Attachment C** sets out the reasons for my decision to refuse access to certain material to which you have requested access.

The documents to which I have decided to grant partial access under the FOI Act are at **Attachment D**.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Alistair, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Jessica Hockings
Director
Freedom of Information and Privacy

Attachments

- | | |
|---------------|-----------------------|
| Attachment A: | Review rights |
| Attachment B: | Schedule of documents |
| Attachment C: | Statement of reasons |
| Attachment D: | Documents |



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for Information Commissioner review of the decision.

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 of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.



Attachment B - Schedule of Documents - Freedom of Information Request FOI23/352

Document no.	Date	No. pages	Description	Access Decision	Exemption/s Applied
1	26 October 2022	1	Internal email regarding receipt of email from Mr Steve Georganas MP to the Attorney-General	Grant access in part	Section 22(1): Irrelevant material Section 47F(1): Personal Privacy
2	26 October 2022	2	Attachment to document 1 – Constituent correspondence to Mr Georganas	Refuse access	Section 47F(1): Personal Privacy
3	26 October 2022	1	Attachment to document 1 – Letter from Mr Georganas to the Attorney-General	Grant access in part	Section 47F(1): Personal Privacy
4	26 October 2022	1	Summary for Ministerial Correspondence – MC22-024299	Grant access in part	Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
5	26 October 2022	5	Draft response to MC22-024299 – version 4	Grant access in part	Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
6	26 October 2022	5	Draft response to MC22-024299 – version 5	Grant access in part	Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
7	26 October 2022	5	Draft response to MC22-024299 – version 7	Grant access in part	Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
8	26 October 2022	5	Draft response to MC22-024299 – version 8	Grant access in part	Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
9	26 October 2022	4	Draft response to MC22-024299 – version 15	Grant access in part	Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy

Document no.	Date	No. pages	Description	Access Decision	Exemption/s Applied
10	26 October 2022	4	Draft response to MC22-024299 – version 17	Grant access in part	Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
11	20 January 2023	1	Email reply to Mr Georganas from the department	Grant access in part	Section 22(1): Irrelevant material
12	20 January 2023	1	Attachment to document 11 – Attorney-General signed letter to Mr Georganas	Grant access in part	Section 47F(1): Personal Privacy
13	20 January 2023	1	Internal email regarding correspondence from a member of the public	Grant access in part	Section 22(1): Irrelevant material Section 47F(1): Personal Privacy
14	20 January 2023	22	MC22-024299 – System processing history	Grant access in part	Section 22(1): Irrelevant material Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
15	20 January 2023	1	MC22-024299 – System version history	Grant access in part	Section 22(1): Irrelevant material Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
16	16 March 2023	7	Letter from a member of the public to the Attorney-General	Refuse access	Section 47F(1): Personal Privacy
17	6 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
18	11 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
19	11 April 2023	2	Draft response to MC23-005187 version 2	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
20	11 April 2023	2	Draft response to MC23-005187 version 3	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
21	12 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
22	17 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
23	17 April 2023	2	Draft response to MC23-005187 version 2	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
24	18 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy

Document no.	Date	No. pages	Description	Access Decision	Exemption/s Applied
25	18 April 2023	2	Draft response to MC23-005187 version 2	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
26	24 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
27	24 April 2023	2	Draft response to MC23-005187 version 2	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
28	26 April 2023	2	Draft response to MC23-005187	Refuse access	Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
29	6 June 2023	1	Email from department to a member of the public	Refuse access	Section 47F(1): Personal Privacy
30	6 June 2023	2	Attachment to document 29 – Letter from the department to a member of the public	Refuse access	Section 47F(1): Personal Privacy
31	6 June 2023	7	MC23-005187 – System processing history	Grant access in part	Section 22(1): Irrelevant material Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy
32	6 June 2023	22	MC23-005187 – System version history	Grant access in part	Section 22(1): Irrelevant material Section 47C(1): Deliberative processes Section 47E(d): Certain operations of agencies Section 47F(1): Personal Privacy



Attachment C – Statement of reasons – FOI23/352

This document, when read in conjunction with the schedule of documents at **Attachment B**, provides information about the reasons I have decided not to disclose certain material to you in response to your request for documents under the *Freedom of Information Act 1982* (FOI Act).

Section 22: Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act provides that if an agency decides to give access to a document that would disclose information that would reasonably be regarded as irrelevant to the request, and it is possible for the agency to prepare a copy (an *edited copy*) of the document, modified by deletions, the agency must prepare the edited copy and give the applicant access to it.

In deciding to delete material which would reasonably be regarded as irrelevant to a request, the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC) (the Guidelines) provide at paragraph 3.95 that:

It is important for agencies to keep in mind that the implicit purpose of s 22 is to facilitate access to information promptly and at the lowest reasonable cost through the deletion of material that can readily be deleted, and that an applicant has either agreed or is likely to agree that the material is irrelevant

I note that when the department acknowledged your request by email on 21 July 2023, you were advised that the following information would be regarded as irrelevant to your request:

- personal information of junior officers of the department or other government authorities
- exact duplicate documents, and
- incomplete email chains within the scope of the FOI request.

As there is no record available to me to suggest that you disagreed with this approach, I have decided to regard the above categories of information as irrelevant to your request and have deleted this material under section 22 of the FOI Act.

Public interest conditional exemptions

An agency or minister can refuse access to a document or part of a document that is conditionally exempt from disclosure under Division 3 of Part IV of the FOI Act. Documents for your request which are conditionally exempt under Division 3 relate to the following categories:

- deliberative processes (section 47C)
- certain operations of agencies (section 47E)
- personal privacy (section 47F)

Brief information about each of the conditional exemptions applied when making a decision about disclosure of each of the documents to which you have requested access is set out below. Additional information about each of these conditional exemptions can be obtained from the OAIC *FOI Guidelines* available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions>.

Where a document is assessed as conditionally exempt, it is only exempt from disclosure if disclosure would, on balance, be contrary to the public interest. The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

A single public interest test applies to each of the conditional exemptions. This public interest test includes certain factors that *must* be taken into account where relevant, and other factors which *must not* be taken into account. My reasoning in regard to the public interest are set out below.

Section 47C: Public interest conditional exemption—deliberative processes

Section 47C of the FOI Act provides that 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 an agency.

In applying this exemption, paragraph 6.55 of the Guidelines provide that:

The deliberative processes exemption differs from other conditional exemptions in that no type of harm is required to result from disclosure. The only consideration is whether the document includes content of a specific type, namely deliberative matter.

I am satisfied that the relevant material is not purely factual and is deliberative matter within the meaning of section 47C(1), being in the nature of and relating to:

- opinion, advice and recommendations,
- a collection of facts or opinions, including the pattern of facts or opinions considered, and
- draft versions of correspondence.

The deliberative matter described above was created for the purpose of, and in connection with the process of assessing and drafting a response to correspondence from the member of the public. This includes written drafts of correspondence to a member of the public addressing matters they confidentially raised with the Attorney-General and the department. The documents are interim drafts, reviews and deliberations on the appropriate response to be provided to the correspondent., The correspondence was submitted to the department to assist in providing a response.

Accordingly, I have decided that the relevant material is conditionally exempt under s 47C(1) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest and have included my reasoning in this regard below under the header '*Section 11A(5): Public interest test*'.

Section 47E: Public interest conditional exemption—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:

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

I have decided to apply s 47E(d) to documents 4-10, 14, 15, 31 and 32 of your request.

Section 47E(d) 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'*.

Material within the above-mentioned documents consists of information technology (IT) user name identifiers, and the email addresses and telephone numbers of senior executive officers or internal mailboxes which are used by the department for internal and operational reasons. I consider that disclosure of the information would affect the business and information security operations of the relevant areas within the department as its release could reasonably be likely to invite or cause interference with the department's IT systems by malicious actors, and lead to various (including unreasonable and vexatious) communications and inquiries being made to the department by members of the public. The relevant areas of the department, are not resourced to manage that additional work which may result from these contacts.

I confirm the email addresses and telephone numbers are not publicly available, nor do they appear to be otherwise publicly available. I further note that the department has established channels of communication through which members of the community and the media may submit enquiries and feedback. They can be located on the department's website.

Accordingly, I am satisfied that the relevant material is conditionally exempt under section 47E(d) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest and have included my reasoning in this regard below under the header *'Section 11A(5): Public interest test'*.

Section 47F: Public interest conditional exemption—personal privacy

Section 47F(1) 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). For the purposes of the FOI Act, personal information is defined as: 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.

I have identified the following personal information relating to private individuals in the relevant documents for your request: names; telephone numbers, email addresses, physical addresses, signatures of different people, along with personal opinions, advice and recollections of a member of the public. This material is found in incoming correspondence to the Attorney-General or the department, and in the internal documents of the department and outgoing responses of the department which refer to or address the matters outlined in the correspondence from the member of the public.

In deciding whether to conditionally exempt the personal information described above, I have had regard to the following factors set out in section 47F(2) of the FOI Act:

- (a) the extent to which the information is well known;*
- (b) whether the people to whom the information relates are 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 considers relevant.*

I have also considered the responses or lack thereof from two third parties who were consulted under s 27 and 27A of the FOI Act. My reasons for applying the s 47F(1) exemption to each of the categories of personal information listed above are set out below.

In my view none of the identified personal information is well known, nor are the persons concerned generally known to be (or to have been) associated with the particular matters dealt with in the documents. The information is known only to the persons whose information appears in the documents and departmental officers with responsibility for the matters concerned. I note that in response to consultation the third party concerned objected to disclosure of their information.

The department consulted a third party regarding much of this personal information however no response was received. While no response was received, I consider it likely that the release of this information would lead to them being identified and would reasonably be expected to cause harm or distress to the persons concerned.

For the reasons set out above, I have decided to exempt the personal information of individuals pursuant to s 47F(1) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in this regard under the header '*Section 11A(5): Public interest test*'.

Section 11A(5): Public interest test

Access to a conditionally exempt document must generally be given unless doing so would be contrary to the public interest. The Guidelines issued by the OAIC provide at paragraph 6.5 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*
- *related to matters of common concern or relevance to all members of the public, or a substantial section of the public.*

In deciding whether to disclose conditionally exempt material, I have considered the factors favouring access set out in s 11B(3) of the FOI Act. I have not taken into account the irrelevant factors listed under s 11B(4) of the FOI Act.

Of the factors favouring disclosure, I consider that release of the conditionally exempt material identified for your request would promote the objects of the FOI Act, including by:

- promoting the objects of the FOI Act, including by:
 - informing the community of the Government's operations,
 - revealing the reason for a government decision,
 - enhancing the scrutiny of government decision making.

The FOI Act does not list any specific factors weighing against disclosure. However, I have considered the non-exhaustive list of factors against disclosure in the Guidelines as well as the particular circumstances relevant to the conditionally exempt material.

I consider the release of the conditionally exempt material could, as the case may be, reasonably be expected to prejudice:

- the protection of an individual's right to privacy,
- the fair treatment of individuals,
- the maintenance of a safe and harassment free workplace,
- harm the interests of an individual or group of individuals, and
- impede the administration of justice generally, including procedural fairness.

On balance, I consider the factors against disclosure outweigh the factors favouring access and that providing access to the conditionally exempt material identified for your request would be contrary to the public interest.