



Australian Government
Department of Finance

Reference: FOI 23-24/008
Contact: FOI Team
E-mail: foi@finance.gov.au

Alex Pentland
via Right to Know website

By email only: foi+request-10475-21e79ee0@righttoknow.org.au

Dear Mr Pentland

Freedom of Information Request – FOI 23-24/008

On 14 July 2023, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following:

I seek access to the following:

- (a) Documents and correspondence relating to the moving of Senator Babet's electorate office (from the CBD to Narre Warren) from 21 May 2022
- (b) The enumerated costs of the move of Senator Babet's electorate office from the CBD to Narre Warren.

On 9 August 2023, you agreed to amend the scope of your request as provided in **Attachment A**.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Decision

I have identified two (2) documents as falling within the scope of your request and I have decided to release both documents in part as they disclose personal and business information.

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;

- consultations with third parties in accordance with the FOI Act and submissions made by those third parties;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Exempt and irrelevant information removed from the documents

I have redacted irrelevant and exempt information from the documents and released the edited form of the documents to you.

Information removed as it discloses personal information – section 47F

Section 47F of the FOI Act provides:

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).

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 consider relevant.

The FOI Guidelines provide:

[6.140] An agency or minister must have regard to the following matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information:

- 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
- any other matters that the agency or minister considers relevant.

[6.142] Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release.

[6.145] ... disclosure may be unreasonable if the person provided the information to Government on the understanding that it would not be made publicly available, and there are no other statutory disclosure frameworks that would require release of the information.

[6.157] There needs to be careful consideration of the exemption where the personal information does not relate to the public servant's usual duties and responsibilities. For example, if a document included information about an individual's disposition or private characteristics, disclosure is likely to be unreasonable. This would generally include the reasons a public servant has applied for personal leave, information about their performance management or whether they were unsuccessful during a recruitment process.

In these circumstances, it would be an unreasonable disclosure of personal information to release the documents. Accordingly, I consider that the documents are in part conditionally exempt under section 47F of the FOI Act.

Information removed as it discloses business information – section 47G

Section 47G of the FOI Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business,

commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

The FOI Guidelines provide:

[6.12] In order to find that s 47G(1)(a) applies, a decision maker would need to be satisfied that if the document were disclosed there would be: an unreasonable adverse effect, on the business or professional affairs of an individual, or the lawful business, commercial or financial affairs of an organisation or undertaking.

[6.13] These criteria require more than simply asserting that a third party's business affairs would be adversely affected by disclosure. The effect would need to be unreasonable. This requires a balancing of interests, including the private interests of the business and other interests such as the public interest.

Section 47G is intended to protect the business interests of third parties dealing with the government. The documents contain sensitive information belonging to the operations of a third-party business activity. If this information is released publicly, there is a risk that there would be an adverse impact on the commercial operations of the third party. I consider this information to be related to the business operations of the third party and could reasonably be expected to affect the third party's lawful business, commercial or financial affairs.

I consider that information as identified in both documents, is conditionally exempt under section 47G of the FOI Act.

Public interest test

Having formed the view that the Documents are exempt, in part, under sections 47F and 47G of the FOI Act, I am now required to consider the public interest test for the purposes of determining whether access to the conditionally exempt documents would, on balance, be contrary to the public interest.

Section 11A of the FOI Act provides:

5. 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.

Factors favouring disclosure

Section 11B of the FOI Act provides:

1. Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - a. promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - b. inform debate on a matter of public importance;
 - c. promote effective oversight of public expenditure;
 - d. allow a person to access his or her own personal information.

I consider that giving access to the documents would promote the objectives of the FOI Act by providing access to documents held by an agency. I attribute minimal weight to this factor as this objective applies to all documents, regardless of the effect of releasing the documents.

Factors against disclosure

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of factors against disclosure, of which, I consider could reasonably be expected to prejudice an agency's

ability to obtain similar information in the future; and may have an adverse impact on the business interests of the third party.

I attribute significant weight to the above factors for there is a need to preserve reasonably held expectations of confidentiality for third party suppliers, particularly in relation to documents that contain commercially sensitive information.

Irrelevant considerations

I have not taken into account any of the irrelevant factors listed under Section 11B of the FOI Act:

3. The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest;
 - a. access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of 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 document was (or is) a 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.

Balancing the public interest factors

The FOI Guidelines provide:

[6.25] The decision maker must determine whether access to a conditionally exempt document is, at the time of the decision, contrary to the public interest, taking into account the factors for and against disclosure.

[6.27] To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

I consider that there is public interest in providing access to documents held by Finance, however, for the reasons listed above, I consider there is greater public interest in protecting the privacy of individuals and sensitive information related to third party business operations. It is reasonably likely that if this information was released, it likely would affect third party suppliers' lawful business operations.

Therefore, I consider that releasing the conditionally exempt information in the documents would, on balance, be contrary to the public interest.

Third party consultation

Finance consulted with third parties and provided them with a copy of the documents with our proposed redactions. We did not receive any objections to the release of the documents.

Review and appeal rights

You are entitled to request an internal review or an external review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at **Attachment A**.

Publication

Finance will publish the documents released to you on our [Disclosure Log](#). Finance's policy is to publish the documents the working day after they are released to you.

If you have any questions in regard to this request, please contact the FOI Team on the above contact details.

Yours sincerely,

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

Sally Bektas
Assistant Secretary
PBR Frameworks | Ministerial and Parliamentary Services
Department of Finance
4 October 2023



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 17 February 2023 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.