



Australian Government

Australian Public Service Commission

Our reference: LEX 659

Becky

By email: foi+request-10558-c5e6d1cf@righttoknow.org.au

Dear Applicant

Freedom of Information Internal Review Request – LEX 659

1. I am writing about your request for internal review, dated 28 September 2023, regarding a decision made by the Australian Public Service Commission (**Commission**) under the *Freedom of Information Act 1982 (FOI Act)*.

Background

2. On 12 August 2023, you requested the following documents from the Commission under the FOI Act:

I request access to all freedom of information decisions made by officials in the Australian Public Service Commission between 1 January 2023 and 30 June 2023, inclusive.

3. On 17 August 2023 you agreed to the Commission's request to refine the scope of the request and reduced the scope to between 1 April 2023 and 30 June 2023, inclusive.
4. On 30 August 2023, you were notified of third party consultation.
5. On 27 September 2023, the relevant authorised Freedom of Information (**FOI**) decision maker, Ms Melanie McIntyre, made a decision to release four documents in part and to refuse access to seven documents (the Original Decision).
6. On 28 September 2023, you sought an internal review of Ms McIntyre's decision in respect of documents 1 - 7.

Decision

7. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
8. I am satisfied the documents are partially exempt documents on the grounds described in Attachment A and agree with the reasons set out in Attachment B to the Original Decision.



Australian Government

Australian Public Service Commission

9. I therefore **affirm** Ms McIntyre's earlier decision to refuse your request for access to documents under sections 22, 47E and 47F of the FOI Act.
10. The reasons for my decision are set out in **Attachment A**.

Deletion of exempt matter or irrelevant material

11. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of the request.

12. Relevant to deleting exempt or irrelevant content from a document, the FOI Guidelines provide:

3.98 Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

13. I consider the objects of the FOI Act will not be served by providing access to an edited version of the exempt documents because extensive editing is required that would leave only a skeleton of the former documents, conveying little content or substance.

Contacts

14. If you require clarification on matters in this letter, please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Review rights

15. You are entitled to seek review of this decision. Your review rights are set out at **Attachment B**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shyam Raghupathi'.

Mr Shyam Raghupathi
Authorised FOI decision maker
27 October 2023



Australian Government

Australian Public Service Commission

ATTACHMENT A

Reasons for Decision

16. In reaching my decision, I have considered:

- the terms of your request
- the relevant documents;
- the third-party consultation;
- the FOI Act; and
- the FOI Guidelines.

Section 47E- Certain operations of agencies

17. Section 47E of the FOI Act provides that a document is conditionally exempt if it would, or could, reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operation.

18. In particular, under section 47E(d) a document is conditionally exempt if its disclosure would, or could be reasonably expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

19. Consistent with the original decision, I consider disclosure of content of certain requests in the decision notices would be likely to have a larger effect of inhibiting or discouraging Commission staff and other Commonwealth staff to freely and effectively communicate on the assessment of matters under the *Public Service Act 1999* (PS Act) or under the *Public Interest Disclosure Act 2013* (PID Act).

20. Further, I consider disclosure of the information contained in those parts of documents 1- 7 could reasonably affect the willingness of people to make complaints or raise concerns under these Acts.

21. Should individuals be unwilling or unable to effectively participate in these matters, I consider that this would ultimately have a substantial adverse effect on the Commission's ability to:

- carry out its obligations under the PID Act, including its ability to ensure that allegations of misconduct are being investigated and where necessary take appropriate action in a proper and efficient manner; and
- carry out its obligations and investigative functions under the PS Act.



Australian Government

Australian Public Service Commission

Section 47F- Personal Privacy

22. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
23. Personal information means 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
 - the information or opinion is recorded in a material form or not.
24. I am satisfied that documents 1 -7 contain personal information including names and email addresses.
25. In considering whether disclosure of that personal information would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:
- 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, and
 - any other matter I consider relevant.
26. This further requires consideration of all of the circumstances. The Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 AT [51] outlined:
- ‘...whether a disclosure is ‘unreasonable’ requires...a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...’*
27. I have considered the above factors, and particularly the extent to which the information in the documents is already well-known and in the public domain. On that basis, consistent with the original decision, I find that disclosure of the personal information contained in documents 1-7 would be unreasonable. I am also not satisfied there would be public interest served in disclosure of this particular information, versus the public interest in maintaining the third-party’s personal privacy. This is because either:
- the individuals’ personal information, in particular their name, will identify them;



Australian Government

Australian Public Service Commission

- the personal information is unique and relates specifically to the individuals, and is generally not well known or publicly available; the FOI Act does not control or restrict the subsequent use or dissemination of information released under the FOI Act; or
- release of the individuals' personal information may cause stress for them or other detriment; and disclosure would prejudice the individuals' right to privacy.

28. However, in accordance with section 11(A)5 of the FOI Act, I must nevertheless give access to the conditionally exempt information unless in the circumstances it would be, on balance, contrary to the public interest to do so. My consideration of the public interest is below.

Public interest considerations

29. Subsection 11A(5) of the FOI Act provides:

'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'.

30. In weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure at section 11B(3). In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance; and
- promote effective oversight of public expenditure.

31. I have identified the following factors as weighing against disclosure:

- disclosure could reasonably be expected to prejudice the privacy of any third party individuals
- disclosure of any third party individual's personal information or parts of their FOI request will not advance the scrutiny of any decisions falling within scope of your FOI request
- the disclosure of certain information could be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission.

32. On balance, I consider disclosure of the conditionally exempt information in documents 1 - 7 would be contrary to the public interest, and so the information is exempt from disclosure under section 47F of the FOI Act.



Australian Government

Australian Public Service Commission

ATTACHMENT B

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek external review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Applying for external review by the Australian Information Commissioner

If you do not agree with the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may 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

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