



Australian Government
Classification Board

Our reference: FOI 24-058

Anonymous

By email: foi+request-10562-2d6f7ab6@righttoknow.org.au

Dear Anonymous,

Decision on your Freedom of Information Request

I refer to your request of 14 August 2023, to the Classification Board (the Board), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

1 Your request

You requested access to:

I request the decision report and note from each of the classifiers for Halo Infinite and Halo Infinite (Campaign). I also request screenshot of the application (such as the web browser) showing information from the database of Halo Infinite and Halo Infinite (Campaign). It is something that staff may have access to and shows more or different information than what the public sees when using the thing at <https://www.classification.gov.au/search/title> to go to the webpage of the title.

Personal information of third-party individuals; including public servants below the SES level and all email addresses, signatures and direct telephone numbers is not outside the scope of this request.

2 Authority to make decision

I am authorised to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

3 Decision

I have identified 10 documents that are relevant to your request. These documents were in the possession of the Board when your request was received.

You have requested access to data that is held in computer systems ordinarily available to the Board. Pursuant to section 17 of the FOI Act, the Board has used its computer systems to produce 2 written discrete documents that contains the information you are seeking to access.



I have decided to grant partial access to 12 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

4.1 Section 47E - Documents affecting 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, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.


Paragraph 6.114 of the FOI Guidelines states that for this conditional exemption to apply, the documents must relate to either:

- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety, or
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

The Board has statutory obligations under the *Work Health and Safety Act 2011*, including a primary duty of care, so far as is reasonably practicable, to ensure that persons are not put at risk from work carried out as part of the conduct of the Board. It is the aim of the Board's Work Health and Safety framework to protect workers and other persons against harm to their health, safety and welfare through elimination or minimisation of risks arising from work, and release of such information could cause harm to their physical and mental wellbeing.

I am satisfied that disclosure of the personal information of public servants contained in the documents relevant to your request may substantially and adversely affect the Board's ability to meet its statutory obligations under the WHS Act. There is therefore a protective element to my decision to ensure that the Classification Branch staff who support the Board, and the Classification Board Members are not subjected to inappropriate risks or harm.

I am satisfied that, because of the nature of the work performed by the public servants whose names and contact details are included in the documents, disclosure of that information may pose a risk to the health and safety of those staff.



The Board provides support and information to the Australian community and has many external facing contact points including phone and email addresses for the community to contact the Board in a safe and efficient way. These general contact details are readily available, including being published on the Board's website.

These specific channels of communication have been put in place to enable the Board to effectively manage its resources and protect the wellbeing of its staff. They are resourced to manage enquiries from members of the public, with staff appropriately trained to manage these types of enquiries. It is reasonable to expect that if these channels of communication were by-passed, the Board would experience a diversion of its resources, and in addition the management functions of the agency and its personnel would be detrimentally impacted.

I am satisfied that the parts of the documents marked 's47E(c)' relate to human resources policies and workplace health and safety functions.

I am satisfied that the parts of the documents marked 's47E(c)' would, or could reasonably be expected to have, a substantial adverse effect on the management or assessment of personnel by the Board.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police [1996] AATA 347*, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the Board's 'proper and efficient' operations, that is, the Board is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the parts of the documents marked 's47E(d)' contains information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on the Board's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the Board conducts those operational activities.

For the reasons outlined above, I decided that the parts of the documents marked 's47E' are conditionally exempt from disclosure under section 47E of the FOI Act.


Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

4.2 Section 47F – Documents affecting personal privacy

Section 47F 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).

Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *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 whether the information or opinion is recorded in a material form or not.



Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals

Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

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. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... 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 ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

- 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

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

Paragraph 6.153 of the FOI Guidelines states:

Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.

The documents contain the personal information of Australian Public Service (APS) staff who are not in the Senior Executive Service (SES), and the Classification Board Members.

However, I note that in *Chief Executive Officer, Services Australia and Justin Warren [2020]* AATA 4557 (*Warren*), at paragraph 83, Deputy President Forgie noted:

The whole of the FOI Act is a finely tuned balance between two interests. In one side of the balance is the facilitation and promotion of access to a national resource that is information held by Government, which enables increased public participation in Government processes and increased scrutiny, discussion, comment, and review of the Government's activities. In the other is the protection of the national interest, the essential operation of government and the privacy of those who deal with government. It is most important, therefore, that its provisions be read very carefully and that presumptions should not be introduced that are not expressed, or necessarily implicit, in the words Parliament has chosen to achieve the balance that it wants. Those words should be the starting point of any consideration rather than any presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and increases the objects of the FOI Act.

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- release of this information would cause stress to the individuals concerned

- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states 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
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would allow you access to your own personal information.

Factors weighing against disclosure


I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct
- could reasonably be expected to prejudice the management function of an agency
- could reasonably be expected to, have a substantial and an unreasonable effect on the Board's proper and efficient operations
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
 - The Board is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
 - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- would prejudice the Board's ability to meet its statutory obligations and responsibilities in relation to the work health and safety of its employees
 - I note that the placing of the personal information of individuals who work for government agencies into the public domain has the potential to place those individuals at risk of harassment, abuse, threats and intimidation. This would be detrimental to the individuals concerned, and potentially also their families. Mitigating this risk is even more important with the prevalence of social media and technology allowing individuals to be more easily identifiable and contactable in online environments

In considering the public interest in disclosing public servants' personal information to you, I have taken into consideration the following factors that weigh against disclosure of the conditionally exempt information at this time:

- the type of work undertaken by the relevant staff
- the fact that the relevant staff were not discharging powers, making decisions or exercising functions that impact on the rights and entitlements of members of the community
- the fact that the relevant staff details are included in the documents merely as a result of administrative support functions, such as secretariat support
- the particular circumstances of the relevant staff such that the staff members may be vulnerable to, or at greater risk of harm, if their name and contact details are disclosed
- the fact that the relevant staff details are not publicly available, including in the Government Online Directory

I consider that the public interest in increasing participation in government processes or in increasing scrutiny, discussion, comment and review of Government decision making is not advanced by the release of personal information of staff below SES level contained in the documents. I note that this is consistent with the findings of the Administrative Appeals Tribunal in *Warren and Chief Executive Officer, Services Australia (Freedom of Information)* [2020] AATA 4557.



In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

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

Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from officers with responsibility for the subject matter contained in the documents captured by your request

6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log.

Further information

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts provides administrative assistance to the Classification Board in relation to FOI matters. If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Fiona Jolly', written in a cursive style.

Fiona Jolly
Assistant Secretary
Classification Board

Date: 11 September 2023

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-053

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	18 Nov 2022	1 – Decision report – Halo Infinite – file downloaded from OSCA database	4	Partial access granted	s 47F s 47E(c)
2.	18 Nov 2022	2 – Decision report – Halo Infinite Campaign – file downloaded from OSCA database	4	Partial access granted	s 47F s 47E(c)
3.	9 Aug 2021	3 - BLUES - T212066 - FH - Halo Infinite Campaign – file downloaded from OSCA database	3	Partial access granted	s 47F s 47E(c)
4.	9 Aug 2021	4 - BLUES - T212066 - TM - Halo Infinite Campaign – file downloaded from OSCA database	2	Partial access granted	s 47F s 47E(c)
5.	9 Aug 2021	5 - Blues scan - T212066 – DC – Halo Infinite Campaign – file downloaded from OSCA database	4	Partial access granted	s 47F s 47E(c)
6.	9 Aug 2021	6 - Blues cover - T212066 - DC - Halo Infinite Campaign – file downloaded from OSCA database	1	Partial access granted	s 47F s 47E(c)
7.	9 Aug 2021	7 - BLUES - T212066 - FH - Halo Infinite – file downloaded from OSCA database	2	Partial access granted	s 47F s 47E(c)
8.	9 Aug 2021	8 - BLUES - T212066 - TM - Halo Infinite – file downloaded from OSCA database	2	Partial access granted	s 47F s 47E(c)
9.	9 Aug 2021	9 - Blues scan - T212066 - DC - Halo Infinite – file downloaded from OSCA database	4	Partial access granted	s 47F s 47E(c)
10.	9 Aug 2021	10 - Blues cover - T212066 - DC - Halo Infinite – file downloaded from OSCA database	1	Partial access granted	s 47F s 47E(c)
11.	22 Aug 2021	11- Halo Infinite Database Screenshots – taken from OSCA database	7	Partial access granted	s 47F s 47E(c) s 47E(d)
12.	22 Aug 2021	12 – Halo Infinite Campaign Database Screenshots – taken from OSCA database	7	Partial access granted	s 47F s 47E(c) s 47E(d)

ATTACHMENT B.

YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: www.oaic.gov.au/freedom-of-information/foi-review-process.