



Our reference: FOIREQ23/00156

Attention: CR

By Email: foi+request-10573-fae48088@righttoknow.org.au

Your Freedom of Information Request – FOIREQ23/00156

Dear CR,

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 15 August 2023.

In your request you seek access to the following:

‘Dear Office of the Australian Information Commissioner, I am writing to kindly request access to the following documents:

- 1. Any policies, procedures, guidelines, manuals, memorandums or other guidance materials used by Information Commissioners and staff within the OAIC to assist in making determinations on requests for extensions of time to process FOI requests, IC Reviews, FOI Complaints, or any other functions performed by the OAIC and Commissioners in relation to FOI requests.*
- 2. Copies of all templates, forms or other documents submitted by agencies or FOI applicants to the OAIC seeking extensions of time to process FOI requests, FOI Complaints or any other processes under the FOI Act for which application forms or notification templates exist. I request these documents be provided in hard copy or text document format rather than web links if possible.*

Administratively, I also request confirmation on whether agencies are obligated under the FOI Act or Guidelines to provide copies of extension of time applications submitted to the OAIC directly to the original FOI applicant

I would like to express my appreciation for your cooperation, professionalism, and promptness in handling IC reviews. Your office's diligence supports improved access to information to help promote transparency and accountability.

Thank you for your attention to this matter. I look forward to receiving the requested information at your earliest convenience [...]

On 17 August 2023, the OAIC contacted you to advise that your request will be actioned by the Legal Services Team, and further clarification was sought regarding the nature of your request as follows:

'Dear CR,

Thank you for your email to the OAIC on 15 August 2023.

We seek further clarification from you in relation to the documents you are seeking:

Part 1 of your FOI request

Option 1

Are you seeking "policies...guidance materials...to assist in making determinations on requests for extension of time to

- process FOI requests,*
- IC reviews*
- FOI Complaints,*
- any other functions performed by the OAIC and Commissioners in relation to FOI requests.*

OR

Option 2

Are you seeking "policies...guidance materials...to assist in making determinations on

- requests for extension of time to process FOI requests,*
- IC reviews*
- FOI Complaints,*
- any other functions performed by the OAIC and Commissioners in relation to FOI requests.*

Please kindly let us know which option is correct.

Part 2 of your FOI request

You sought "Copies of all templates, forms or other documents submitted by agencies or FOI applicants to the OAIC seeking extensions of time to process FOI requests, FOI Complaints or any other processes under the FOI Act for which application forms or notification templates exist. I request these documents be provided in hard copy or text document format rather than web links if possible."

Option 1

Are you seeking the blank templates, forms or other guidance documents usually used by agencies to seek:

- *extension of time to process FOI requests,*
- *IC reviews*
- *FOI Complaints,*
- *any other functions performed by the OAIC and Commissioners in relation to FOI requests.*

OR

Option 2

Are you seeking a copy of all documents submitted by agencies or FOI applicants to the OAIC to seek:

- *extension of time to process FOI requests,*
- *IC reviews*
- *FOI Complaints,*
- *any other functions performed by the OAIC and Commissioners in relation to FOI requests.*

Our interpretation of scope – seeking your confirmation

Our preliminary interpretation of the scope of your request is that you are seeking

- *Part 1 – Option 2*
- *Part 2 – Option 1.*

*However we would be grateful if you can please kindly confirm if this is correct and provide the above clarification by **close of business on Friday 18 August 2023**. If we do not hear from you by this time we will assume that you do not object to our interpretation of scope and will continue to process in accordance with our interpretation.*

Form of access

Please kindly note the form of release of documents by the OAIC usually is in the form of PDF documents sent across via email to the email from which the FOI request was made. However, we can certainly provide you with hard copy of the documents if you provide us with the postal address to send the documents to.

We thank you and look forward to hearing from you. ‘

On 17 August 2023 you provided clarification regarding the information that you sought from the OAIC as follows:

‘[...] For Part 1, I am seeking Option 2 - any internal policies, guidelines or other materials used by the OAIC and Commissioners to assist in making determinations regarding functions performed in relation to other agencies' FOI requests, such as requests for extensions of time, IC reviews, and other processes.

For Part 2, I am seeking Option 1 - blank templates or forms.

PDF format for the released documents is favourable.

I appreciate you taking the time to ensure we have a clear mutual understanding of my request. Your thoroughness in this matter supports the principles of transparency and accountable governance. Please do not hesitate to contact me if any part of the scope remains unclear.

Thank you for your assistance [...]

The Legal Services Team acknowledged your FOI request on 17 August 2023.

Request timeframe

Your request was made on 15 August 2023.

This means that a decision on your request is due to be decided by 14 September 2023.

Decision

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

I have identified 60 documents within the scope of your request. I have made a decision to:

- grant you access to 57 documents in full;
- grant you access to 3 documents in part

Reasons for decision

Material taken into account

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

- your FOI request dated 15 August 2023 and subsequent clarification of the scope of your request dated 17 August 2023;

- the documents at issue;
- relevant case law;
- the FOI Act, in particular ss 24A, 11, 11A, 47E(d), 47F, 47g; and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines).

Searches Undertaken (s 24A)

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

The following line areas of the OAIC conducted reasonable searches for documents relevant to your request:

- The Freedom of Information Branch (Intake and Early Resolutions Team; Reviews and Investigations Team and Significant Decisions Team)

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request and that all documents relevant to the scope of your request has been identified by the OAIC in the schedule and that no additional documents exist.

Proper and efficient conduct of OAIC's operations (Section 47E(d))

In accordance with section 47E(d) of the FOI Act, I have made a decision to grant access in part to **2** documents.

I have decided to redact material in these documents on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC as an agency.

Paragraph 6.101 of the FOI Guidelines explains that:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is

explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

Additionally, at 6.103 the FOI Guidelines further explain:

An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material (s 26, see Part 3).

The material that I have decided is subject to conditional exemption under section 47E(d) comprises of:

- Direct mobile phone contact details of OAIC staff within the Freedom of Information Branch

In order to determine whether disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of agencies, I have taken into consideration the functions and activities of the relevant agencies.

The decision of *Chief Executive Officer, Services Australia v Justin Warren* [2020] AATA 4557 discussed the issue of the disclosure of public servants' names and contact details which was also discussed in the FOI Guidelines and the Information Commissioner's 2020 Policy Paper Disclosure of public servants' names and contact details in response to FOI requests.

It is accepted that the position that the assessment of the redaction of staff names and contact details should be assessed on a case-by-case basis.

Further, in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 when considering the release of the direct contact details of agency personnel. In the case the Tribunal found at [130]:

An individual may include his or her direct telephone number in correspondence directed to other persons. Unless published on an agency's website or made public in some other way, such as on a pamphlet or report available to the public, I consider that disclosure of an individual's telephone number in his or her place of employment is unreasonable. Its disclosure will provide an avenue by which others may choose to express their displeasure with the individual or with that for which he or she is responsible but its disclosure does not make any positive contribution to

increasing public participation in Government processes or in increasing scrutiny, discussion, comment and review of the Government's activities

I note that the mobile phone contact details of OAIC staff are not published on the OAIC's website and are not publicly available. With these circumstances in mind, I consider that the release of the direct mobile number contact details of OAIC staff would substantially and adversely affect the agency by disclosure of this information for the following reasons:

- Undermine the purpose of public facing the FOI Branch to receive and manage FOI enquiries from the public; and
- Result in a diversion of resources away from the performance of normal duties of the FOI Branch.

I therefore consider the relevant documents identified in the schedule as conditionally exempt under section 47E(d) of the FOI Act. My consideration of the public interest test, in respect of all the material subject to conditional exemption in these documents is discussed below.

Personal Privacy (s47F)

I have also found the material in 1 document exempt in part pursuant to s47F of the FOI Act.

The material that I have found exempt can be described as consisting of:

- Matter reference numbers, names of the applicants, names of the respondents and names of the legal representatives associated with the IC review of access grant matters processed by the OAIC

Personal Information

A document is conditionally exempt under section 47F(1) of the FOI Act where disclosure would involve the unreasonable disclosure of personal information of any person, including a deceased person. This exemption is intended to protect the personal privacy of individuals.

Section 4 of the FOI Act provides that the definition of personal information in the *Privacy Act 1988* (Cth) also applies to the FOI Act. The term personal information is defined in section 6 of the Privacy Act to be:

... 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;*
- (b) *whether the information or opinion is recorded in a material form or not.*

I am satisfied that this material meets the definition of personal information because disclosure of this information would reasonably release personal circumstances of the respective individuals and therefore constitutes personal information.

Unreasonable disclosure of personal information

In relation to whether disclosure of the material under the FOI Act would involve an unreasonable disclosure of the third party individuals' personal information, s 47F(2) provides a decision maker must have regard to:

- 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 matters the agency or minister considers relevant.

The FOI Guidelines further describes the key factors for determining whether disclosure is unreasonable at paragraph 6.143:

- 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.

Consistent with *FG and National Archives of Australia [2015] AICmr 26*, the FOI Guidelines at paragraph 6.143 explain that other relevant factors 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*

Consideration of whether disclosure of the material would be unreasonable

In consideration of these factors and the material contained within the documents, I am satisfied that the release of this personal information would be unreasonable because:

- Identifiable details concerning the matter number and parties involved in the IC review of an access grant decision (including the applicant, respondent and legal representatives) can be reasonably used to identify personal information about the matter that is not otherwise well-known or publicly accessible;
- If details concerning the matter number, respondent and legal representatives involved in the IC review of an access grant decision are disclosed, the relevant applicant may be identified
- The release of this information would not further any public purpose, but it is likely to cause undue stress to the applicants seeking the IC review of the access grant decisions in question;
- The information is not relevant to the substance of the FOI request

For the reasons given above, I consider that the material in question is conditionally exempt under section 47F of the FOI Act. I have made a decision to redact the material on the basis that disclosure would constitute an unreasonable disclosure of personal information.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Business Affairs (s47G)

I have also found the material in **1** document exempt in part pursuant to s47G(1)(b) of the FOI Act.

Under s 47G(1) of the FOI Act, a document is conditionally exempt from disclosure if its release would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking, in circumstances where disclosure of such information would unreasonably affect an organisation in the undertaking of

its lawful business or commercial affairs. As noted in *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66 [156-157]:

“... the business information exemption is intended to protect the interests of third parties dealing with the government. The operation of s 47G depends on the effect of disclosure rather than the precise nature of the information itself. Notwithstanding this, the information must have some relevance to a person in respect of their business or professional affairs or to the business, commercial and financial affairs of the organisation... The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.”

In this instance, the exempt document contains detailed information concerning the matter reference numbers, applicant names, respondent names and legal representatives associated with third-party organisations who are the applicants in the IC review of access grant matters processed by the OAIC. Such information therefore relates to the business affairs of the relevant third-party organisations.

I am therefore satisfied that this is information concerning the business affairs of the affected third-party organisations.

Prejudice future supply of information – s 47G(1)(b)

Section 47G(1)(b) applies where disclosure could reasonably be expected to prejudice the future supply of information to the OAIC for the purpose of the administration of matters administered by the OAIC. The FOI Guidelines provide, at [6.198]:

This limb of the conditional exemption comprises two parts:

- a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
- the reduction will prejudice the operations of the agency

The FOI Guidelines further provide, at [6.200] – [6.201]:

Where the business information in question can be obtained compulsorily, or is required for some benefit or grant, no claim of prejudice can be made. No prejudice will occur if the information in issue is routine or administrative (that is, generated as a matter of practice).

The agency will usually be best placed to identify, and be concerned about the circumstances where the disclosure of documents might reasonably be expected to prejudice the future supply of information to it.

The term 'prejudice' is not defined in the FOI Act. The FOI Guidelines provide the following definition, at [5.22] – [5.23]:

... The Macquarie Dictionary definition of 'prejudice' requires:

- a. disadvantage resulting from some judgement or action of another
- b. resulting injury or detriment

A prejudicial effect is one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes. The expected outcome does not need to have an impact that is 'substantial and adverse'.

As above, although seeking an IC review of an access grant decision from the OAIC is not compulsory, the extent of information provided by a third-party organisation as part of the processing of the review is voluntary. The OAIC recommends that third-party organisations who are applicants in IC review matters provide business information in order to assist the OAIC with processing the review.

As previously mentioned above, noting that the documents in question contain details of third-party organisations' business affairs, in my view, the disclosure of the relevant documents in this case could reasonably be expected to prejudice the future supply of information to the OAIC if third party organisations' sensitive business information, which was provided to the OAIC for the purpose of assisting OAIC in processing the IC review of access grant matters, is publicly disclosed. Namely, I consider that the disclosure of such information could discourage business organisations seeking the IC review of access decisions, from providing necessary information for the purpose of processing the reviews in the future.

For the above reasons, based on the information before me at this time, I am satisfied that disclosure of the documents at this time could reasonably be expected to prejudice the future supply of information to the OAIC for the purposes of processing the IC review of access grant matters (s 47G(1)(b)).

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

The public interest test (s 11A(5))

As provided above, I have considered that material within the documents is subject to conditional exemptions under sections 47E(d), 47F and 47G of the FOI Act.

An agency cannot refuse access to conditionally exempt documents unless giving access would, on balance, be contrary to the public interest (s 11A(5)). The FOI

Guidelines explain that disclosure of conditionally exempt documents is required unless the particular circumstances at the time of decision reveal countervailing harm which overrides the public interest in giving access. In this case, I must consider whether disclosure of the 3 documents at this time would be contrary to the public interest.

Subsection 11B(3) of the FOI Act provides a list of public interest factors favouring disclosure. The FOI Guidelines at paragraph [6.19] also provide a non-exhaustive list of public interest factors favouring disclosure, as well as public interest factors against disclosure. The relevant public interest factor in favour of disclosure in this case is that disclosure would promote the objects of the FOI Act and inform debate on a matter of public importance. Other factors are not relevant.

The public interest factors favouring disclosure must be balanced against any public interest factors against disclosure. The FOI Guidelines at paragraph [6.22] contain a non-exhaustive list of factors against disclosure. In my view, the following relevant public interest factors against disclosure in this case is that disclosure would:

- Undermine the purpose of public facing the FOI team to receive and manage FOI enquiries from the public;
- Would involve the unreasonable disclosure of personal information of applicants associated with the IC review of access grant decisions processed by the OAIC; and
- Would prejudice the future supply of information to the OAIC by third-party organisations for the purposes of processing the IC review of access grant matters (s 47G(1)(b)).

I am satisfied that the public interest factors against disclosure outweigh the public interest factor in favour of disclosure.

I have decided that at this time, giving you full access to the documents, which I have found to be conditionally exempt under s47F, s 47E(d) and s47G of the FOI Act would, on balance, be contrary to the public interest.

Administrative Request

I note as part of your FOI request you sought the following information:

‘[...] Administratively, I also request confirmation on whether agencies are obligated under the FOI Act or Guidelines to provide copies of extension of time applications submitted to the OAIC directly to the original FOI applicant [...].’

In response to your request, Legal contacted the FOI Branch who provided the following information:

‘There is no statutory obligation to share this, but we do advise respondents in our online extension of time request form that the application may be shared with the applicant, and our online [guidance for agencies](#) also states the following:

Generally the OAIC will consult the applicant where the extension sought is for a period longer than 30 days or where the agency is seeking to vary (further extend) an earlier extension granted by the OAIC. During consultation, the OAIC will often send the applicant a copy of the EOT application, so please advise if it contains anything sensitive that should not be passed on.’

Conclusion

Please see the following page for information about your review rights and information about the OAIC’s disclosure log.

Yours sincerely

Alessia Mercuri

Lawyer

14 September 2023

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

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

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact foi@oaic.gov.au. More information is available on the Access our information page on our website.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

The documents I have decided to release to you do not contain personal information that would be unreasonable to publish. As a result, the documents will be published on our disclosure log.