



**Australian Government**  
**Attorney-General's Department**

Our ref: FOI23/448

8 December 2023

Right to Know – “The Australian Public”

By email: [foi+request-10607-70386dfb@righttoknow.org.au](mailto:foi+request-10607-70386dfb@righttoknow.org.au)

Dear applicant

**Freedom of Information Request FOI23/448 – Decision letter**

I am writing to give you a decision about your request to the Attorney-General's Department (the department) for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

**Your request**

On 24 August 2023, you requested access under the FOI Act to:

*all documents including but not limited to emails, files notes, webex, signal and whatsapp messages and advertisements relating to the EOI for the Chief Operating Officer's Executive Officer position.*

On 30 August 2023, the department acknowledged your request and sought confirmation that you were seeking documents regarding the expression of interest process conducted in 2023 for the Chief Operating Officer's Executive Officer. On 30 August 2023 you confirmed that this interpretation was correct.

On 22 September 2023, the department notified you that the processing time for your request had been extended by 30 days pursuant to s 15(6) of the FOI Act to allow the department to undertake third party consultations. Following that extension, a decision in relation to your request was due on 23 October 2023.

On 19 October 2023, the department requested you grant an extension to the processing time for this request under s 15AA of the FOI Act. On 23 October 2023 you advised that you declined to grant an extension.

**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 16 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 and arranging for comprehensive searches of relevant departmental electronic and hard copy holdings.

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 views of a third party consulted by the department under s 27A
- the provisions of the FOI Act, and
- the FOI Guidelines issued by the Australian Information Commissioner (the Guidelines).

I have decided to:

- Grant access in full to 2 documents
- Grant access to 4 documents in part with deletion of material which:
  - may be regarded as irrelevant to your request under s 22(1) of the FOI Act; **or**
  - is exempt pursuant to ss 47C(1), 47E(c), 47E(d) and 47F(1) of the FOI Act.
- Refuse access in full to 10 documents on the basis that the material they contain is:
  - exempt pursuant to s 47E(c) and 47F(1) of the FOI Act.

### **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**.

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

Yours sincerely



Bridie Dawson  
Assistant Secretary  
Human Resources Branch

### **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 s 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](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

Email: [foidr@oaic.gov.au](mailto: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/reviews-and-complaints/information-commissioner-review/>.



Attachment B - Schedule of documents - Freedom of Information Request FOI23/448

Document no.	Date	No. pages	Description	Access decision	Exemption/s applied
1	7 August 2023	2	Internal email regarding publication of Expression of Interest opportunity	Grant access in part	Section 47E(d): Certain operations of agencies Section 47F(1): Personal privacy
2	7 August 2023	3	Internal email chain regarding draft of Expression of Interest opportunity	Grant access in part	Section 47C(1): Deliberative material Section 47E(d): Certain operations of agencies Section 47F(1): Personal privacy
3	7 August 2023	2	Email information staff of expression of interest opportunity	Grant access in part	Section 47E(d): Certain operations of agencies Section 47F(1): Personal privacy
4	Undated	2	Preview – Online Job Advertisement	Grant access in part	Section 47E(d): Certain operations of agencies
5	10 August 2023	2	All staff Job Opportunities email	Grant access in full	-
6	11 August 2023	2	Resume – Applicant 1	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
7	15 August 2023	3	Resume – Applicant 2	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
8	15 August 2023	3	Resume – Applicant 3	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
9	17 August 2023	2	Resume – Applicant 4	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
10	17 August 2023	2	All staff Job Opportunities email	Grant access in full	-
11	17 August 2023	4	Resume – Applicant 5	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
12	21 August 2023	3	Email chain between Chief Operating Officer and Applicant 5 advising outcome	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
13	21 August 2023	1	Auto-reply email from Applicant 4	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
14	21 August 2023	3	Email chain between Chief Operating	Refuse access	Section 47E(c): Certain operations of agencies

Document no.	Date	No. pages	Description	Access decision	Exemption/s applied
			Officer and Applicant 1 advising outcome		Section 47F(1): Personal privacy
15	21 August 2023	2	Email chain between Chief Operating Officer and Applicant 2 advising outcome	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy
16	22 August 2023	3	Email chain regarding final expression of interest process and notifying successful Applicant 3	Grant access in part	Section 22(1): Irrelevant material Section 47E(c): Certain operations of agencies Section 47E(d): Certain operations of agencies Section 47F(1): Personal privacy
17	28 August 2023	2	Email chain between Chief Operating Officer and Applicant 4 advising outcome	Refuse access	Section 47E(c): Certain operations of agencies Section 47F(1): Personal privacy



## Attachment C – Statement of reasons – FOI23/448

This document, when read in conjunction with the documents released at **Attachment C**, 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.

I have used the provision to delete duplicate material and content that is irrelevant to the terms of your request. Specifically, where one version of an email is in scope and scheduled in this decision, I have deleted duplicates of that document. I have also deleted content from document 16 which relates to matters outside of the scope of your request. Given these factors, I considered it likely that you would agree that this information is irrelevant to your request and I have therefore deleted it from this decision under s 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 the following provisions in Division 3:

- deliberative processes (s 47C)
- certain operations of agencies (s 47E), and
- personal privacy (s 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. 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 in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

I am satisfied that document the relevant material is **not purely factual** and is deliberative matter within the meaning of s 47C(1), being in the nature of and relating to opinions or advice on interim deliberative material. Namely, the provision of amendments on draft documentation for a recruitment activity.

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, 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.*

I have decided to apply s 47E(c) and 47E(d) to the documents for your request. My reasons for applying these exemptions have been set out below.

*Section 47E(c)*

Section 47E(c) 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 management or assessment of personnel by the Commonwealth or by an agency.

Paragraph 6.114 of the Guidelines provide that for this 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*
- *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*

I am satisfied that documents captured by your request predominantly relate to the management of personnel by the department, in particular in relation to the department's recruitment activities. Documents identified for your request include the email correspondence between applicants and the decision maker for the vacancy, and the applicant's resumes.

I consider that release of this information would detrimentally impact the department's human resources, and specifically recruitment activities including its ability to attract applicants to internal executive support roles. I consider that the release of this information would lead to staff being deterred from expressing interest in such opportunities, and that the inability to fill these positions would have a significant detrimental impact of the effective functioning of the department.

I am also satisfied that release of this sensitive personnel information would undermine the confidence the departments' staff have in its ability to confidentially manage and conduct recruitment activities. This

would likely lead to the department's existing or prospective employees declining to participate in its wider recruitment activities. The inability to attract applicants, and subsequently recruit staff, would have a significant detrimental impact on the department's ability to delivery its essential policy and business functions.

For the reasons set out above, I am satisfied that the documents for your request are conditionally exempt pursuant to s 47E(c) 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.

Section 47E(d)

Material within documents 1-3 and 16 consists of email addresses which are used by the department for internal and operational reasons. These include the direct email addresses of a Senior Executive Service employee and an internal mailbox, used for internal coordination activities. The department has existing communication channels which it directs external parties and members of the public towards to enable them to contact the department's employees. These channels allow the department to manage this work and have dedicated, trained and resourced teams to respond or assist with external contacts. I consider that disclosure of the relevant email addresses in the relevant documents would be likely to result in various (including unreasonable and vexatious) communications and inquiries being received into areas of the department which are not resourced or trained to manage that work.

Accordingly, I am satisfied that the relevant material is conditionally exempt under s 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.

Documents for your request contain the following personal information of departmental employees: names; position titles; professional and educational history and experience, opinions related their professional interests and experiences; professional referees; security clearances; and contact information, including personal home and email addresses, home and work telephone numbers, and professional email addresses.

In deciding whether to conditionally exempt the personal information described above, I have had regard to the following factors set out in s 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.*

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 the relevant personal information is not well known, nor are the persons concerned 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. The department consulted with third parties regarding most of the personal information contained in the documents and, in response to those consultations the third parties objected to disclosure of their information. In relation to other material in the documents where consultation did not occur, I consider it likely that the persons concerned would object to disclosure of their personal information. I consider that disclosure of the information held in these documents could reasonably be expected to cause 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 FOI Guidelines explain 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 through informing the community of the Government's operations and administration.

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 or harm:

- the protection of an individual's right to privacy, including where:
  - the personal information is that of a government employee in relation to personnel management and the disclosure of the information could be reasonably considered to reveal information about their private disposition or personal life,
- the interests of an individual or group of individuals,
- the management function of the department, including its ability to obtain similar information from departmental staff in the future. Release of the identified material could erode the relationship of trust maintained between the department and its staff. The department has a critical reliance on all of its staff in order to carry out its functions for the benefit of the Australian public. It is therefore firmly in the public interest to ensure the department's management relationship with its staff is effectively maintained and prioritised,
- the relationship of trust and confidence maintained between the department and its staff, particularly in relation to the handling and management of human resources matters, and

- the department's ability to meet its legal obligations for a safe and harassment free workplace to its employees.

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.