

28 September 2023

Mr Robert Not Given
By email: foi+request-10631-7d4d12ae@righttoknow.org.au

Dear Robert,

Freedom of Information request (FOI-2023-10088) – Access decision

1. I refer to your email dated 29 August 2023 in which you requested access to documents under the *Freedom of Information Act 1982* (FOI Act). Your request for documents was framed in the following way:

‘Under the FOI Act 1982 (Cth), I request access to any and all documents (including decisions) issued by officials in the Office of the Commonwealth Ombudsman between 1 September 2020 and 31 October 2020 relating to matter 2019-402149.’

Decision

2. I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests.
3. Our Office has identified six (6) documents relevant to your request. I have decided:
 - to refuse access to 6 documents.
4. A schedule setting out the relevant documents is at Attachment B. Our Office identified the documents by searching our electronic records management system and our case management system.

Reasons

5. My findings of fact and reasons for refusing access to the material are as follows.
6. In making my decision I had regard to the following:
 - the terms of your request
 - relevant provisions of the FOI Act
 - the Australian Information Commissioner’s Guidelines on FOI, available at www.oaic.gov.au (the FOI Guidelines)
 - relevant case law and decisions; and
 - The fact that you have used the Right to Know website to make your request, and that any documents released will be published online

Access refusal

Proper and efficient conduct of the operations of the agency

7. 6 documents are exempt from release, pursuant to s 47E which provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to,:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

8. All documents located and within scope of your request are in relation to a complaint made to this office and are exempt in full from release under s 47E(d) of the FOI Act. The FOI Guidelines state at paragraph 6.122:

The exemption may also apply to documents that relate to a complaint made to an investigative body. The disclosure of this type of information could reasonably affect the willingness of people to make complaints to the investigative body, which would have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations.

9. Ombudsman investigations are dealt with in private pursuant to s 8(2) of the *Ombudsman Act 1976*, and Ombudsman officers are to observe confidentiality with respect to information disclosed under the Act (see s 35).
10. As noted in *Australian Broadcasting Corporation and Commonwealth Ombudsman* [2012] AICmr 11 (26 April 2012) ('ABC') at [33]:

"the Ombudsman Act establishes a framework within which the Ombudsman's investigations are conducted in private, and information disclosed or obtained under the Act is treated confidentially...Disclosure, under the FOI Act, of information provided to the Ombudsman by complainants in such circumstances would affect the willingness of people to make complaints to the Ombudsman in the future. That would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman's operations"

11. I have considered the requirement outlined in s 11A of the FOI Act, that access must generally be given to a conditionally exempt document unless it would be, on balance, contrary to the public interest. In considering whether access would, on balance, be contrary to the public interest, I have considered the factors for and against disclosure, including the factors identified in s 11B(3) of the FOI Act. I have also considered the public interest factors favouring and against disclosure in the FOI Guidelines [6.17 – 6.19] and [6.22], as well as matters particular to the Ombudsman's functions and operating environment.
12. In considering whether the public interest would require the documents to be released, the factors against disclosure outweigh those in favour of disclosure. Specifically:

- a. Disclosure would reasonably be expected to prejudice the protection of an individual's right to privacy, in particular the right of complainants

- b. Disclosure would reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman
- c. Disclosure would reasonably be expected to prejudice the Ombudsman's ability to obtain confidential information;
- d. Disclosure would reasonably be expected to prejudice the Ombudsman's ability to obtain similar information in the future.
- e. Disclosure, in this instance, would be to the world at large as the application has been made through the Right to Know website.

Personal privacy

13. In addition to the exemption above, Section 47F of the FOI Act conditionally exempts a document where "its disclosure would involve the unreasonable disclosure of personal information about any person." I must give access unless access would, on balance, be contrary to the public interest. (s 11A(5))
14. 'Personal information' is defined in section 4 of the FOI Act as:
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; and (b) whether the information or opinion is recorded in a material form or not.
15. The documents contain personal information of complainants. I am satisfied that the relevant information is personal information: s 4 of the FOI Act.
16. In considering whether disclosure would be unreasonable, subsection 47F(2) of the FOI Act requires that I 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 considered relevant.
17. The relevant information is not well known. The individuals to whom the information relates are not generally known to be associated with the relevant information. The relevant information is not readily available from public sources. Release, in this instance, to a Right to Know email address, would result in the information being published on the internet.
18. I find that release of such information would involve the unreasonable disclosure of personal information under s 47F(1) of the FOI Act.

Public interest

19. In deciding whether access should be given to this information on the basis of public interest, I have taken into account the public interest factors for and against disclosure, s 11B(3) of the FOI Act, the FOI Guidelines at paragraphs 6.17 – 6.22, as well as matters specific to this agency's functions and operating environment.
20. The release of complaint related material may increase scrutiny around the handling of investigations by the Commonwealth Ombudsman. However, release of the information could reasonably be expected to prejudice the protection of a person's right to privacy, specifically the

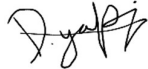
privacy of members of the public who have interacted with the Office, and undermine future investigations.

21. Pursuant to subsection 11A(5) of the FOI Act, I have concluded that this material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

Contact details

22. You may contact me via email at information.access@ombudsman.gov.au or via telephone on 1300 362 072.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Yalpi', with a stylized flourish at the end.

David Yalpi
Legal Officer
Legal Team

Influencing systemic improvement in public administration

Doc No.	Pages/ Folio	Description of Document	Decision on access	Exemption	Notes
1.	2	<i>Document 1</i>	<i>Exempt in full</i>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains material related to complaint investigation</i></p> <p><i>Contains personal information</i></p>
2.	1	<i>Document 2</i>	<i>Exempt in full</i>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains material related to complaint investigation</i></p> <p><i>Contains personal information</i></p>
3.	1	<i>Document 3</i>	<i>Exempt in full</i>	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act</i></p>	<p><i>Contains material related to complaint investigation</i></p> <p><i>Contains personal information</i></p>

Doc No.	Pages/ Folio	Description of Document	Decision on access	Exemption	Notes
				<i>(unreasonable disclosure of personal information)</i>	
4.	4	<i>Document 4</i>	Exempt in full	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains material related to complaint investigation</i></p> <p><i>Contains personal information</i></p>
5.	1	<i>Document 5</i>	Exempt in full	<p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p> <p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p>	<p><i>Contains material related to complaint investigation</i></p> <p><i>Contains personal information</i></p>
6.	2	<i>Document 6</i>	Exempt in full	<p><i>Material outside scope of</i></p> <p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p>	<p><i>Contains material related to complaint investigation</i></p> <p><i>Contains personal information</i></p>

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