

Our ref: FOI-2023-10088

26 October 2023

Mr Robert Not Given

Emailed to: foi+request-10631-7d4d12ae@righttoknow.org.au

Dear Robert

### **Freedom of Information request – internal review decision**

1. I refer to your request for internal review of Mr David Yalpi's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act).
2. I am an officer authorised under s 23(1) of the FOI Act to make internal review decisions in relation to FOI requests.

### **Summary**

3. Your FOI request dated 29 August 2023, was expressed in the following terms:

*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.*

4. You were advised on 28 September 2023 of the decision to refuse access to 6 documents located within scope of your request.

### **Request for internal review**

5. On 30 September 2023, our Office received your request for internal review of the primary decision under s 54B of the FOI Act. You stated that:

*Please pass this on to the person who conducts Freedom of Information reviews.*

*I am writing to request an internal review of Commonwealth Ombudsman's handling of my FOI request 'FOI request - documents'.*

*A full history of my FOI request and all correspondence is available on the Internet at this address:*

[https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Ffoi\\_request\\_documents&data=05%7C01%7CInformation.Access%40ombudsman.gov.au%7C593ed777bbbd4a14af9a08dbc157ada9%7C443ee9e811ff4c829e4139331045260a%7C0%7C0%7C638316354559994251%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Ffoi_request_documents&data=05%7C01%7CInformation.Access%40ombudsman.gov.au%7C593ed777bbbd4a14af9a08dbc157ada9%7C443ee9e811ff4c829e4139331045260a%7C0%7C0%7C638316354559994251%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4)



12. 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).

13. 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".*

14. I am satisfied that disclosure of the documents sought, to an individual with no known connection to the complaint and investigation and in circumstances where that information will be made public, could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency. The Ombudsman's ability to exercise its functions and powers is reliant on complainants and other agencies willingness to provide information to our Office. Public detriment will arise if the Office is compromised in our ability to obtain confidential information in future investigations.

*Public interest*

15. 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.

16. 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 the complainant.
- 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: s 47F***

17. 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)).

18. ‘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.*

19. The documents contain personal information of a complainant. I am satisfied that the relevant information is personal information: s 4 of the FOI Act.

20. In considering whether disclosure would be unreasonable, s 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.

21. 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.

22. In terms of other matters considered relevant, the Ombudsman is an investigative agency which conducts its investigations in private. There is no known link between you as the FOI applicant and the matters dealt with in the investigation.

23. 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*

24. 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.

25. 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.

26. 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.

## Review rights

27. You have the right to seek Information Commissioner (IC) review of this decision. An application for IC review must be made in writing within 60 days of the decision.
28. 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.
29. While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.
30. You can make an IC review application or make an FOI complaint in one of the following ways:
  - online at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>
  - via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
  - by mail to GPO Box 5218 Sydney NSW 2001, or
  - by fax to 02 9284 9666.
31. More information about the Information Commissioner reviews and complaints is available at its website: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## Contacts

32. If you have any questions about this letter, you may contact via email at [information.access@ombudsman.gov.au](mailto:information.access@ombudsman.gov.au) or via telephone on 1300 362 072.

Yours sincerely



Jodie Hanlon  
Legal Team

*Influencing systemic improvement in public administration*