



Australian Government

Australian Public Service Commission

Anselmo Cristobal Hernandez y Pinal

By Email: foi+request-10699-9542a246@righttoknow.org.au

Our Reference: LEX 650

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made **19 September 2023** for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to the following:

“Under the FOI Act, I request access to the administratively released documents associated with LEX 540, LEX 544, LEX 545, and LEX 546.”
4. In making this decision I have had regard to:
 - the terms of your request;
 - the FOI Act; and
 - the FOI Guidelines issued by the Australian Information Commissioner (FOI Guidelines).

Decision on your FOI request

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request.
7. I have identified ten (10) documents in scope of your request.
8. I have decided to refuse access to all documents.
9. **Attachment A** sets out the grounds on which the documents are partially exempt.

10. My reasons are set out in **Attachment B**.

Deletion of exempt matter or irrelevant material

11. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of the request.

12. Relevant to deleting exempt or irrelevant content from a document, the FOI Guidelines provide:

3.98 Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

13. I consider the objects of the FOI Act will not be served by providing access to an edited version of the exempt documents because extensive editing is required that would leave only a skeleton of the former documents, conveying little content or substance.

Contacts

14. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3813 or by email at foi@apsc.gov.au.

Review rights

15. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Yours sincerely,



Melanie McIntyre
FOI decision maker
18 October 2023

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Pages	Description	Exemptions
1	1 - 4	LEX 540 – FOI Request (LEX 189)	s 22 – s 47E, s 47F
2	5 - 8	LEX 540 – Decision Notice (LEX 189)	s 22 – s 47E, s 47F
3	9 - 12	LEX 544 – FOI Request (LEX 190)	s 22 – s 47E, s 47F
4	13 - 16	LEX 544 – Decision Notice (LEX 190)	s 22 – s 47E, s 47F
5	17 - 27	LEX 545 – Decision Notice (LEX 187)	s 22 – s 47E, s 47F
6	28 - 36	LEX 545 – Internal Review Decision (LEX 230)	s 22 – s 47E, s 47F
7	37 – 40	LEX 545 – FOI Request (LEX 190)	s 22 – s 47E, s 47F
8	41 – 44	LEX 545 – Decision Notice (LEX 190)	s 22 – s 47E, s 47F
9	45 – 53	LEX 546 – Internal Review Decision (LEX 230)	s 22 – s 47E, s 47F
10	54 - 64	LEX 546 – Decision Notice (LEX 187)	s 22 – s 47E, s 47F

Reasons for Decision

1. In making my decision on your request, I have had regard to:
 - the terms of your request;
 - the contents of the documents;
 - the FOI Act; and
 - the FOI Guidelines.

Section 47E – Certain operations of agencies

2. Subsection 47E(d) of the FOI Act provide that a document is conditionally exempt from disclosure if its disclosure would, or could be reasonably expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
3. I consider that releasing the content of certain requests in the decision notices would likely have a larger effect of inhibiting or discouraging Commission staff and other Commonwealth staff to freely and effectively communicate on matters relating to the PID Act, including in the consideration and assessment of material subject to a Public Interest Disclosure investigation.
4. Therefore, I have decided to conditionally exempt sections of the documents because disclosure of this information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Commission's operations.

Section 47F – Personal Privacy

5. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
6. 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
 - the information or opinion is recorded in a material form or not.
7. I consider that the documents contain such matter; specifically, the names and email addresses of other individuals.
8. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether the disclosure of the personal information would involve the unreasonable disclosure of personal information.

9. In considering what is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at [51] stated:
- “ ...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... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...”*
10. I have identified the following factors that, in my view, do not support the release of this personal information under section 47F of the FOI Act:
- the individuals’ personal information, in particular their name, will identify them;
 - the personal information is unique and relates specifically to the individuals, and is generally not well known or publicly available; the FOI Act does not control or restrict the subsequent use or dissemination of information released under the FOI Act;
 - release of the individuals’ personal information may cause stress for them or other detriment; and
 - disclosure would prejudice the individuals’ right to privacy.

Section 11A – public interest test

11. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.
12. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the documents would promote the objects of the FOI Act and inform debate on a matter of public importance.
13. I have identified the following factors as weighing against disclosure:
- Disclosure of any third party individual’s personal information will not advance any scrutiny of any decisions falling within scope of your FOI request;
 - disclosure would prejudice the third party individual’s right to privacy; and
 - the disclosure of certain information would have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission;
and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer

Australian Public Service Commission

B Block, Treasury Building

GPO Box 3176

Parkes Place West

PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing.

The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au