



Dr Andrew Terhorst

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Dear Dr Terhorst

## **FOI 23-32 - Decision on Access**

I refer to the request made under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to Airservices Australia (**Airservices**) on 20 September 2023 (**the request**). It seeks access to:

**“documents showing correspondence between Airservices Australia, Qantas/Jetstar, and Virgin Australia related to the design and implementation of the current Runway 30 RNP-AR flight path”**

I am authorised under section 23 of the FOI Act and the Airservices Instrument of Delegation and Authorisation to make decisions on primary requests under the FOI Act.

### **Decision**

#### Access in part

I have decided to grant access to the document sought by the request in part as it contains material that is:

- conditionally exempt under sections 47F (personal privacy) and 47G(1)(a) (business information), the FOI Act, and access to that conditionally exempt material would be contrary to the public interest; and/or
- irrelevant to the scope of the request under section 22 of the FOI Act.

The document and my decision in relation to each are set out in the schedule of documents at **Attachment A (the Schedule)**.

The reasons for my decision are set out in the Statement of Reasons at **Attachment B**.

### **Review rights and complaints**

Information about your rights of review and how you can make a complaint about the handling of your request is at **Attachment C**.

### **Contact**

If you wish to discuss my decision please contact me at [foi@airservicesaustralia.com](mailto:foi@airservicesaustralia.com).

Yours sincerely

Marcus Bourget  
Authorised FOI Decision Maker

13 March 2024

## SCHEDULE OF DOCUMENTS

Doc No.	Description	Decision
1.	<i>Email</i> Date: Wednesday, 13 November 2019 11:15 AM Subject: YMHB	<i>Release in part</i> Section 22 – material that is irrelevant to the scope of the request Section 47F – name and mobile phone number of Airservices Australia staff members – name, position and phone numbers of Virgin Australia staff member Section 47G(1) – business information of Virgin Australia

## STATEMENT OF REASONS

### Material on which the decision is based

I relied on the following material in coming to this decision:

- the terms of the request;
- the documents subject to the FOI request;
- advice from subject matter specialists within Airservices Australia (**Airservices**) regarding the nature and sensitivity of the documents subject to the request;
- responses from third parties consulted as part of the processing of the request;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

### Section 22 - Irrelevant material

Section 22 of the FOI Act relevantly provides that if an agency may delete information from a document where it is irrelevant to a request.

I have found that a document (identified in the Schedule) contains irrelevant matter and have deleted it pursuant to section 22 of the FOI Act.

### Section 47F - personal privacy

Section 47F of the FOI Act relevantly provides that a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). Access to the conditionally exempt document may only be withheld where it is contrary to the public interest.

A document subject to the request (identified in the Schedule) contains personal information, specifically names, positions titles and phone numbers. I am satisfied that this personal information is not publicly available, nor are the individuals concerned well known to be involved in the matters described in the documents.

I therefore find that disclosure of this personal information would be unreasonable and conditionally exempt under section 47F(1) of the FOI Act.

When considering whether access to this personal information is contrary to the public interest I acknowledge that access would inherently promote the objects of the FOI Act, demonstrating full transparency of government. However, providing access to this personal information would also intrude on the privacy of the individuals to whom the personal information relates whilst also not providing great insight into the decision making processes of Airservices. This adverse effect outweighs any benefit that could flow from disclosing that personal information.

As a result, I am satisfied that access to the personal information would be contrary to the public interest, and have decided to withhold access to it.

### Section 47G(1)(a) - business information

Section 47G(1)(a) of the FOI Act relevantly provides that a document is conditionally exempt if it would disclose information concerning the business, commercial or financial affairs of an organisation and disclosure of that information would, or could reasonably be expected to unreasonably affect that organisation in respect of its lawful business, financial or commercial affairs.

OFFICIAL

A document subject to the request (identified in the Schedule) contains information relating to the operational performance of of Virgin Australia. I am satisfied that this material is business information of commercial value to Virgin Australia and conditionally exempt under section 47G(1) (a) of the FOI Act.

When considering whether access to this information is contrary to the public interest, I acknowledge that access to it would inherently promote the objects of the FOI Act. However, releasing the specific information could unduly affect Virgin Australia's competitive position in a highly competitive aviation market. Therefore after careful consideration, I conclude that the potential adverse impact to Virgin Australia of the release of the information outweighs the public interest in disclosing the information.

## INFORMATION ON REVIEW RIGHTS

The *Freedom of Information Act 1982* (the **FOI Act**) gives you the right to apply for a review of this decision via:

- (a) an internal review; or
- (b) the Australian Information Commissioner (**Information Commissioner**).

### Internal review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- (a) made in writing;
- (b) made within 30 days of receiving this letter; and
- (c) sent to [foi@airservicesaustralia.com](mailto:foi@airservicesaustralia.com).

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review results in you not being provided access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner.

### Information Commissioner review

You can opt to instead seek external review by the Information Commissioner. To seek review you must apply to the Information Commissioner within 60 days of the receipt of this decision letter. Further details on this process can be found on their website at <https://www.oaic.gov.au/>.

You will also have the opportunity to seek Information Commissioner review of an Internal Review if you are dissatisfied with its outcome.

## Complaints to the Information Commissioner

### *Information Commissioner*

You may also 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. Further details on this process can be found on their website at <https://www.oaic.gov.au/>.