



OFFICIAL

## Freedom of Information (FOI) request

### Notice of Decision

Reference: FOI 2023/313

To Francis Unmeopa

Email: [Foi+request-10809-deb1c773@righttoknow.org.au](mailto:Foi+request-10809-deb1c773@righttoknow.org.au)

Dear Mr Unmeopa

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act), received on 30 October 2023.

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

### Request decided out of time

A decision on your request was due 30 January 2024. Unfortunately the Department was unable to complete the processing of your request by the due date. In these circumstances the Department follows the advice in the Information Commissioner Guidelines at paragraph 3.163.

### Scope of request

You set out your request in the following terms:

*Please refer to FOI/2021/2021/2671C. I will be grateful if you will provide me with a copy of:*

- 1. document 1 with the s22 redactions removed.*
- 2. a copy of the documents PM&C brought into existence or received in response to 18 October 2021 FOI request. Please note this means the documents also created during the internal review and IC review phases of the request.*
- 3. correspondence between the Office of the Australian Information Commissioner and PM&C related to the request.*

On 21 November 2023, you clarified the terms of your request as follows:

*In regards to my initial FOI request, Yes - please exclude any documents which are already publicly available as well as duplicates related to the request.*

## Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

## Material taken into account

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- the Guidelines issued by the Information Commissioner<sup>1</sup> (the FOI Guidelines)
- the views of a third party consulted by the Department under section 27A.

## Documents in scope of request

The Department has identified 32 documents that fall within the scope of your request.

These documents are set out in the Schedule of Documents at **Attachment A**.

## Decision

In summary, my decision is to:

- Remove irrelevant material under section 22 of the FOI Act.
- Grant access in part to 32 documents on grounds material in those documents is exempt under sections 42, 47E, 47F and 47G of the FOI Act.

## Reason for decision

My findings of fact and reasons for deciding that certain information is irrelevant or exempt is set out below.

### 1. Deletion of irrelevant matter

Section 22 of the FOI Act enables agencies to prepare an edited copy of documents, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonable be regarded as irrelevant to the request.

In line with your clarification documents that are public or are identified as duplicate material has been edited from the document under section 22. Further in some cases metadata became attached to the top left of some documents during the retrieval process, this metadata was not a part of the

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<sup>1</sup> s 93A of the FOI Act

document at the time of its creation and therefore I have decided it is no information within the terms of your request and is irrelevant.

On 31 October 2023, the Department advised you of its policy to exclude the personal and direct contact details of officers not in the Senior Executive Service (SES) and any Ministerial staff, as well as any person's signature, and the mobile or direct numbers of SES officers, which are contained in documents that fall within the terms of an FOI request. However we note you do intend to seek all staff names and thus I have decided only contact details continue to be subject to the Department's policy. In light of this I find the contact details within the documents is irrelevant and documents can be modified by the Department to delete the irrelevant material.

As discussed above I am satisfied that parts of the documents are irrelevant under section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been released to you as it is relevant to your request.

## **2. Legal Professional Privilege**

Section 42(1) of the FOI Act provides that a document is exempt if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines at paragraph 5.127 discuss how to determine the application of the exemption, by having regard to the common law concept of legal professional privilege. Further the FOI Guidelines at paragraph 5.129 sets out the following considerations:

- whether there is a legal adviser-client relationship;
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation;
- whether the advice given is independent; and
- whether the advice given is confidential.

I am satisfied that part of document 1, 28 and 29 meets the common law requirements for establishing a claim of legal professional privilege.

Accordingly, I am satisfied that the relevant part of the requested document is exempt under section 42 of the FOI Act.

## **3. Certain operations of agencies – proper and efficient conduct**

Section 47E(d) 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 proper and efficient conduct of the operations of an agency.

The requested document contains operational contacts which are not publicly available. The disclosure of these contacts on a public website is expected to have an adverse impact to the team

who manages these contact points, causing disruption and interference with their ability to triage and respond to requests for support from staff across the Department.

In reaching my decision I note the Department has established public channels for the direction of public communication and consultation on our website.

Accordingly, I am satisfied that the requested document is conditionally exempt under section 47E(d) of the FOI Act.

#### 4. Personal privacy

Section 47F(1) of the FOI Act provides a conditional exemption for material that would involve the unreasonable disclosure of personal information about any person (including a deceased person).

'Personal information' under the FOI Act has the same meaning as set out in section 6 of the *Privacy Act 1988* and 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 whether the information or opinion is recorded in a material form or not.

Having identified third party 'personal information' within the document, I have considered the provisions of section 47F(2), which require me to have regard to:

- a) the extent to which the information is well known*
- b) 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*
- c) the availability of the information from publicly accessible sources*
- d) any other matters that the agency or minister considers relevant, for example if it is reasonable to suspect the person would expect their information to be released as part of an FOI request.*

The documents contain the personal information of a third party individual, former staff and current junior staff of the Department. Where it was reasonable to do so I have consulted the staff that would be impacted by the disclosure of their personal information. Those staff members have expressed concern with the risk of disclosure and resulting publication of their names, noting the FOI Guidelines express that release under FOI is a release to the world.

I am satisfied that the identified personal information is not well known and not currently available through a public source, the individuals are unlikely to be known to be associated with the subject matter of the document. I am also satisfied that it is reasonable to assume that the individual, and staff I was unable to consult, would not expect their information to be released.

I consider that it is unreasonable to release or publish an individual's name without their express consent.

Accordingly, I am satisfied that the document is conditionally exempt from release, under section 47F(1) of the FOI Act.

## 5. Business

Section 47G(1) of the FOI Act conditionally exempts documents where disclosure would disclose information concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking (business information), where the disclosure of the information:

- a) would, or could reasonably be expected to, unreasonably affect the person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs, or
- b) Could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Parts of document 1 contain the business information of an organisation. I consider that such business information is conditionally exempt from release, as its disclosure would, or could reasonably be expected to, involve the unreasonable disclosure of a third party.

Accordingly, I am satisfied that those parts of the requested document are conditionally exempt under section 47G(1)(a) of the FOI Act.

## 6. Public interest

The FOI Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest<sup>2</sup>.

As I have decided that parts of the documents are conditionally exempt, I am now required to consider the public interest factors, in doing so I have not taken into account the irrelevant factors as set out in s 11B(4) of the FOI Act.

In applying the public interest, I have noted the objects of the FOI Act<sup>3</sup> and the factors favouring access as listed in s 11B(3) of the FOI Act.

The FOI Act does not set out any public interest factors against disclosure and require that agencies are to have regard to the FOI Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest<sup>4</sup>. The FOI Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the documents found to be conditionally exempt, may weigh against disclosure.

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<sup>2</sup> s 11A(5) of the FOI Act

<sup>3</sup> s 3 of the FOI Act

<sup>4</sup> s 11B(5) of the FOI Act

In my view, the factors against disclosure of the conditionally exempt material is that disclosure of the information could:

- reasonably be expected to adversely affect the business interests of the relevant third party, given the subject matter discussed within the document.
- reasonably be expected to prejudice the right an individual has to maintain their privacy.
- reasonably be expected to interfere and frustrate the day to day operations of the IT support teams requiring a change to how staff may contact them for future support.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the requested document would be contrary to the public interest.

## Review rights

If you disagree with my decision you may apply to the Information Commissioner for a review of the decision.

### Information Commissioner review

Under section 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 after the date of this letter.

More information about Information Commissioner review is available [here](#).<sup>5</sup>

## FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. More information about complaints is available [here](#).<sup>6</sup>

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<sup>5</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

<sup>6</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>

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If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Branko Ananijevski', written in a cursive style.

Branko Ananijevski  
Acting Assistant Secretary  
Legal Policy Branch  
Department of the Prime Minister and Cabinet