



Australian Government
Attorney-General's Department

Our ref: FOI23/585; CM23/37066

20 December 2023

Stephen

By email: foi+request-10857-64f30669@righttoknow.org.au

Dear Stephen

Freedom of Information Request FOI23/585 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 11 November 2023, you requested access to:

the report provided by the Commonwealth Ombudsman to the OLSC under paragraph 11.1(da) of the Legal Services Directions 2017 (Cth) about the legal services expenditure and legal work of the Office of the Commonwealth Ombudsman, particularly because there is no publicly accessible record of the Office of the Commonwealth Ombudsman's legal services expenditures on the website of the Office of the Commonwealth Ombudsman for the 2022-2023 financial year.

On 11 November 2023, the department acknowledged your request by an auto-response email.

On 8 December 2023, the department sought an extension of time under s 15AA of the FOI Act to the 11 January 2023.

On 10 December 2023, you wrote to the department and agreed to extend the processing time to the 20 December 2023.

A decision in relation to your request is due on 20 December 2023.

My decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

I have identified one document that falls within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents and arranging for comprehensive searches of relevant departmental electronic and hard copy holdings.

In making my decision regarding access to the relevant documents, I have taken the following material into account:

- the terms of your request
- the content of the documents identified as within scope of your request

- the provisions of the FOI Act
- the views of an agency with an interest in the material, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

I have decided to grant access in part to the document you have requested, exempting certain material under section 47F (personal privacy).

Statement of reasons

This section explains the reasons for not disclosing certain material to you in response to your request for documents under the FOI Act.

Public interest conditional exemptions

An agency or minister can refuse access to a document or part of a document that is conditionally exempt from disclosure under Division 3 of Part IV of the FOI Act. It is my view that material within the scope of your request is conditionally exempt under Division 3 under section 47F (personal privacy).

Information about this conditional exemption is set out below. Additional information can be obtained from the OAIC FOI Guidelines available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions>.

Where a document is assessed as conditionally exempt, it is only exempt from disclosure if disclosure would, on balance, be contrary to the public interest. The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

A single public interest test applies to each of the conditional exemptions. This public interest test includes certain factors that *must* be taken into account where relevant, and other factors which *must not* be taken into account. My reasoning in regard to the public interest are set out below.

Section 47F: Public interest conditional exemption—personal privacy

Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person). For the purposes of the FOI Act, personal information is defined as:

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.

I have identified the names of a private individual in the document for your request, which constitutes personal information.

In deciding whether to conditionally exempt the personal information described above, I have had regard to the following factors set out in section 47F(2) of the FOI Act:

- (a) the extent to which the information is well known;*
- (b) whether the people to whom the information relates are 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 considers relevant.*

My reasons for applying the section 47F(1) exemption is set out below.

In my view the relevant personal information is not well known, nor is the person concerned generally known to be (or to have been) associated with the particular matters dealt with in the documents. The information is known only to the person whose information appears in the documents and departmental officers with responsibility for the matters concerned.

For the reasons set out above, I have decided to exempt the personal information of individuals pursuant to section 47F(1) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in this regard below.

Section 11A(5): Public interest test

Access to a conditionally exempt document must generally be given unless doing so would be contrary to the public interest. The Guidelines issued by the OAI provide at paragraph 6.5 that the public interest test is considered to be:

- *something that is of serious concern or benefit to the public, not merely of individual interest,*
- *not something of interest to the public, but in the interest of the public,*
- *not a static concept, where it lies in a particular matter will often depend on a balancing of interests,*
- *necessarily broad and non-specific, and*
- *related to matters of common concern or relevance to all members of the public, or a substantial section of the public.*

In deciding whether to disclose conditionally exempt material, I have considered the factors favouring access set out in section 11B(3) of the FOI Act. I have not taken into account the irrelevant factors listed under section 11B(4) of the FOI Act.

Of the factors favouring disclosure, I consider that release of the conditionally exempt material identified for your request would promote the objects of the FOI Act.

The FOI Act does not list any specific factors weighing against disclosure. However, I have considered the non-exhaustive list of factors against disclosure in the Guidelines as well as the particular circumstances relevant to the conditionally exempt material.

I consider the release of the conditionally exempt material could reasonably be expected to prejudice the protection of an individual's right to privacy, the fair treatment of individuals and impede the flow of information between Commonwealth government departments.

On balance, I consider the factors against disclosure outweigh the factors favouring access and that providing access to the conditionally exempt material identified for your request would be contrary to the public interest.

Additional information

I can confirm the Commonwealth Ombudsman has now published the mandatory information relating to external legal services as required under the Legal Services Directions 2017 on its website. This information is available at <https://www.ombudsman.gov.au/about/accountability-and-reporting>.

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

The document to which you I have decided to grant access under the FOI Act are at **Attachment B**.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Leonie, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Michael Johnson', written in a cursive style.

Michael Johnson
Assistant Secretary
Office of Legal Services Coordination

Attachments

Attachment A: Review rights
Attachment B: Document



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

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 of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>.