

Our ref: FOI-2023-10119

16 January 2024

Alex Pentland

By email: foi+request-10880-de538b91@righttoknow.org.au

Dear Alex Pentland,

Freedom of Information request – Access decision

1. I refer to your request of 17 November 2023 to this Office under the *Freedom of Information Act 1982* (FOI Act). Your request for documents was framed in the following way:

This is a Freedom of Information Request for the purposes of the Freedom of Information Act 1982.

I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Commonwealth Ombudsman.

2. On 11 December 2023 I requested a further 30 days to process your request under s 15AA of the FOI Act, which you agreed to later the same day.

Scope

3. I have interpreted the scope of your request to exclude writing templates used by Commonwealth Ombudsman, which differ from writing guides.

Decision

4. I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests. This letter constitutes my notice of decision.
5. Our Office identified eighteen (18) documents relevant to your request. I have decided:
 - To give access to 13 documents in full.
 - To give access to 5 documents in part.
6. In the 5 partially released documents, redactions have been made to the surnames of Ombudsman staff names, direct contact details and commercially valuable information.
7. Our Office identified the documents by searching our electronic records management systems.
8. I **attach** the 13 documents in full and the 5 partially released documents with this notice.
9. A schedule setting out my decision in relation to the relevant documents is at **Attachment A**.
10. Please see below a link to the Australian Government's publicly accessible official style manual, which is also used by the Ombudsman's Office:

https://www.stylemanual.gov.au/?utm_source=Style+Manual+mailing+list&utm_campaign=e0b98a8dd9-

Reasons

Material taken into account

11. In making my decision I had regard to the following:
- the terms of your request;
 - the content of the documents to which you sought access;
 - advice from other, relevant Ombudsman officers;
 - relevant provisions of the FOI Act; and
 - Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, available at www.oaic.gov.au (**FOI Guidelines**).

Findings of fact and reasons for decision

12. Where the Schedule of Documents at **Attachment A** indicates that an exemption has been applied to part of a document, my findings of fact and reasons for deciding that the exemption provision applies to part of that document, are set out below.

Partial access

13. 5 documents have been partially released to you as set out in the attached Schedule of Documents.
14. I have redacted the following:
- A. Surnames of junior Ombudsman staff.
 - B. Direct contact information.
 - C. Terminology showing the use of the relevant computer systems software.
15. I have relied on one general exemption and two conditional exemptions, being:
- A. the personal privacy exemption (s 47F FOI Act)
 - B. the agency operations exemption (s 47E of the FOI Act), and
 - C. the trade secrets or commercially valuable information exemption (s 47 of the FOI Act).

A. Surnames and contact information of Ombudsman Staff

16. Where referenced in the schedule, I have redacted the surnames and contact details of junior Ombudsman staff, relying on both s 47F and s 47E of the FOI Act.

Personal privacy: s 47F

17. Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.
18. Section 11A of the FOI Act provides that while an agency must give a person access to a document if it is conditionally exempt, access may be refused if the document's disclosure would, on balance, be contrary to the public interest.

19. 'Personal information' means:

Information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information is true or not, and

(b) whether the information is recorded in a material form or not.

20. The documents contain personal information in the form of Ombudsman staff full names. I am satisfied that the relevant information is personal information: s 4 of the FOI Act.

Unreasonable

21. If information is personal information, it will be conditionally exempt if its disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, subsection 47F(2) of the FOI Act requires me to take into account:

- i. The extent to which the information is well known.
- ii. 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.
- iii. The availability of the information from publicly accessible sources.
- iv. Any other matter I consider relevant.

22. 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. The agencies provide centralised contact phone numbers and email contact points.

23. Disclosure of a public servant's personal information may be unreasonable under s 47F of the FOI Act. I find that it would be unreasonable in this case as, in my view, given the nature of the work of this Office as a complaint body, disclosure of the personal information of individual staff members may pose a risk to the health and safety of staff in this Office. This is particularly the case where the staff member's full name is provided, as this enables complainants to track down the staff member, for example, through social media.

24. 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

25. Section 11A(5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be contrary to the public interest.

26. In deciding whether access should be given to this information, I have taken a number of matters into account. These matters include the public interest factors for and against disclosure as outlined in the Guidelines at paragraph 6.17 – 6.22, as well as matters specific to our agency's functions and operating environment.

27. I am not of the view that in this instance access to the personal information of public servants would increase scrutiny around government decisions and investigations.

28. The following factors mitigate against disclosure:

- i. Release of the information could reasonably be expected to prejudice the protection of a person's right to privacy.
 - ii. Release of the information could reasonably be expected to impede the Office's work health and safety obligations under the *Work Health and Safety Act 2011 (Cth)*.
 - iii. Disclosure of the relevant personal information could reasonably be expected to result in inappropriate contact resulting in inefficiencies or impediments to the Office's operations.
29. 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.

Certain agency operations: s 47E

30. Section 47E of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to:

...

d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

31. The documents contain the full names of junior Ombudsman staff.

Reasonable expectation

32. The Ombudsman's Office has established contact points and procedures in place for members of the public to communicate with. Disclosure of the full names of Ombudsman staff could reasonably be expected to impede the Ombudsman's functions.

Public Interest

33. Section 11A(5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be contrary to the public interest.
34. 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 – 6.22], as well as matters particular to the Ombudsman's functions and operating environment.
35. Factors favouring disclosure include that disclosure might:
- i. Promote the objects of the FOI Act, including to: inform the community of the Government's operations, including the practices followed by the Government in its dealings with members of the community.

36. Factors against disclosure include that disclosure could:

- i. reasonably be expected to affect the ability of staff members to fulfil their duties;
- ii. have a substantial adverse effect on the management of Office personnel; and

- iii. reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman (see FOI Guidelines 6.22(I)).

37. I have considered the factors for and against disclosure and find, on balance, that the factors against disclosure outweigh the factors in favour of disclosure. I have given greater weight to the proper and efficient conduct of Ombudsman's functions and processes not being impeded or hindered. Disclosure would not at this time be in the public interest.

B. Direct contact information to specific Ombudsman teams

Certain agency operations: s 47E

38. The documents contain the direct contact information to certain Ombudsman teams and disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

Reasonable expectation

39. The Ombudsman's Office has established contact points and procedures in place for members of the public to communicate with. Disclosure of direct contact information could reasonably be expected to impede the Ombudsman's functions.

Public Interest

40. Section 11A(5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be contrary to the public interest.

41. 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 – 6.22], as well as matters particular to the Ombudsman's functions and operating environment.

42. Factors favouring disclosure include that disclosure might:

- i. Promote the objects of the FOI Act, including to: inform the community of the Government's operations, including the practices followed by the Government in its dealings with members of the community.

43. Factors against disclosure include that disclosure could:

- i. reasonably be expected to affect the ability of staff members to fulfil their duties;
- ii. have a substantial adverse effect on the management of Office personnel; and
- iii. reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman (see FOI Guidelines 6.22(I)).

44. I have considered the factors for and against disclosure and find, on balance, that the factors against disclosure outweigh the factors in favour of disclosure. I have given greater weight to the proper and efficient conduct of Ombudsman's functions and processes not being impeded or hindered. Disclosure would not at this time be in the public interest.

C. Information revealing trade secrets and commercially valuable information

45. I am of the view that parts of document 16, 17, and 18, as indicated on the schedule, are exempt in accordance with s 47 of the FOI Act.

46. Section 47 of the FOI Act provides that:

A document is an exempt document if its disclosure under this Act would disclose:

a) trade secrets; or

b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Trade secrets

47. These documents include terminology showing the use of the relevant computer systems software at certain stages in the handling of complaint matters under the *Ombudsman Act 1976*. In line with FOI Guidelines 5.199-5.203, I am of the view this is information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown, constituting trade secrets.

Commercial value

48. These documents include information about use of certain record keeping and case management computer system software operated by the Office. In line with FOI Guidelines 5.204-5.207, I am of the view the information has commercial value, relating to the profitability and viability of a continuing business operation or commercial activity in which our Office is involved.

49. For these reasons I have refused access to parts of these documents under s 47(1)(a) and (b) of the FOI Act.

Review rights

Internal review

50. Under s 54 of the FOI Act, you may apply in writing to our Office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

51. Where possible, please attach reasons for why you believe review of the decision is necessary. The internal review will be carried out by another Ombudsman officer within 30 days.

52. If you choose to seek an internal review, you will afterward have a right to apply to the Office of the Australian Information Commissioner (**OAIC**) for a review of the internal review decision.

Review by the Office of the Australian Information Commissioner

53. Under s 54L of the FOI Act, you may apply to the Office of the OAIC to review my decision. An application for review by the OAIC must be made in writing within 60 days of the decision date, either from the date of this letter or the date of our internal review decision letter. Your request can be lodged in one of the following ways:

- online at [oaic.gov.au/about-us/contact-us](https://www.oaic.gov.au/about-us/contact-us)

- via email to foidr@oaic.gov.au
- by overland mail to GPO Box 5218 Sydney NSW 2001
- in person to Level 2, 175 Pitt Street Sydney NSW

54. More information about the OAIC review process is available at its website:
oaic.gov.au/freedom-of-information/foi-review-process

Complaints to the Office of the Australian Information Commissioner

55. You may complain to the OAIC about action taken by the Ombudsman in relation to your FOI request.

56. 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.

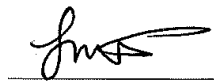
57. You may lodge your complaint either:

- online at oaic.gov.au
- by overland mail to GPO Box 5218 Sydney NSW 2001
- by email to enquiries@oaic.gov.au.

Contact details

58. Should you have any questions, you may contact me via email at information.access@ombudsman.gov.au or via telephone on 1300 362 072.

Yours sincerely



Sophia Murray-Walker

Legal Team

Influencing systemic improvement in public administration

Schedule of Documents – Freedom of Information Request FOI-2023-10119

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption	Information Redacted
1.	October 2023	66 (1-66)	Commonwealth and ACT Ombudsman Brand Guide	Part Access	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information) Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	<ul style="list-style-type: none"> • Direct contact information for Ombudsman Team. • Full name of Ombudsman Officer.
2.	October 2023	38 (67-104)	Australian National Preventative Mechanism Brand Guide	Part Access	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information) Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	<ul style="list-style-type: none"> • Full name of Ombudsman Officer. • Direct contact information of NPM Coordinator.
3.	18 July 2017	11 (105-115)	Judicial Scales Branding Style Guide	Full Access	N/A	N/A
4.	October 2023	5 (116-120)	Brand style guide for reporting	Full Access	N/A	N/A
5.	June 2021	5 (121-125)	Commonwealth Ombudsman Style Guide June 2021	Full Access	N/A	N/A

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption	Information Redacted
6.	June 2021	1 (126)	Commonwealth Ombudsman Style Guide tip sheet June 2021	Full Access	N/A	N/A
7.	June 2021	2 (127-128)	Branding and Terminology Policy for Staff	Full Access	N/A	N/A
8.	June 2021	2 (129-130)	Commonwealth Ombudsman preferred terms June 2021	Full Access	N/A	N/A
9.	NA	8 (131-138)	Email Signatures for Staff	Full Access	N/A	N/A
10.	NA	5 (139-143)	Updating Your Email Signature in Microsoft Outlook	Full Access	N/A	N/A
11.	NA	1 (144)	CO_Aboriginal-Artwork_TeamsBG-With Logo	Full Access	N/A	N/A
12.	NA	1 (145)	CO_Aboriginal-Artwork_TeamsBG_ Without Logo	Full Access	N/A	N/A
13.	NA	2 (146-147)	SOP - How to request report covers	Full Access	N/A	N/A
14.	1 February 2019	13 (148-160)	Communication Accessibility Guide 2018 (A1665351)	Full Access	N/A	N/A
15.	NA	2 (161-162)	Creating Accessible PDF (for staff) (A1948578)	Full Access	N/A	N/A
16.	NA	2 (163-164)	Terminology governance framework	Part Access	Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	<ul style="list-style-type: none"> Direct contact information for Communications.

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption	Information Redacted
					<i>Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)</i>	<ul style="list-style-type: none"> • <i>Terminology showing the use of the relevant computer systems software redacted</i>
17.	NA	2 (165-166)	<i>Fact sheet - New Terminology, Internal</i>	Part Access	<i>Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)</i>	<ul style="list-style-type: none"> • <i>Terminology showing the use of the relevant computer systems software redacted.</i>
18.	NA	1 (167)	<i>Cheat sheet - new terms PDF</i>	Part Access	<i>Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)</i>	<ul style="list-style-type: none"> • <i>Terminology showing the use of the relevant computer systems software redacted.</i>