



Australian Government
Department of Finance

Reference: FOI 23-24/072IR
Contact: FOI Team
E-mail: foi@finance.gov.au

Ben Fairless
via Right to Know

By email only: foi+request-10979-7220ee05@righttoknow.org.au

Dear Mr Fairless,

Freedom of Information – Internal Review FOI 23-24/072IR

On 20 December 2023, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following:

I am seeking a document that contains a comprehensive list of all domain names registered under the .gov.au second-level domain (2TLD). Specifically, I am interested in the following details for each domain:

1. Domain Name
2. Registration Date
3. Expiry Date
4. Administrative Contact Information
5. Technical Contact Information

On 19 January 2024, Finance's decision maker notified you of their access refusal decision. A copy of that decision is at **Attachment A**.

On 30 January 2024, you sought an internal review of Finance's decision. A copy of your request for review is at **Attachment B**.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Decision

I have decided to affirm the original decision being refusal of the release of documents as they contain material that was obtained in confidence.

Reasons for decision

In making my decision, I have had regard to the following:

- the terms of your FOI request and your reasons for seeking an internal review;
- the content of the document/s that fall within the scope of your request;
- the reasons set out in the original decision makers decision letter;
- consultations with third parties in accordance with the FOI Act and submissions made by those third parties;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Your submissions

You submitted the following exemptions did not apply to the documents.

Document obtained in confidence

Subsection 45(1) of the FOI Act provides:

1. A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

A document is exempt from release under subsection 45(1) of the FOI Act if its disclosure would form the basis of legal action for breach of confidence. In other words, this exemption applies if a person who provided confidential information could bring an action for breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure.

The FOI Guidelines provide:

[5.158] A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

[5.159] To found an action for breach of confidence (which means s 45 would apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment.

As mentioned above, the documents sought in your request were obtained by Finance from the third-party provider, auDA. The information has been specifically identified as having contractual confidentiality obligations and the provision of this information is subject to the terms of the contract between Finance and the third-party provider.

The information sought has the necessary quality of confidentiality being that the information is only known to individuals at auDA and a limited number of Finance employees that require this knowledge to perform their role within the department. The quality of the confidentiality has not diminished, nor has it been waived, and the obligation of Finance to retain the quality of confidentiality as per the contract terms has not reduced.

The information is owned by the third-party and is subsequently provided to Finance under the terms of the contract. There is a mutual understanding and agreement that the information is confidential in nature. Access to the information is otherwise restricted. I am not aware of any party having acted inconsistently with their obligations to uphold confidentiality over the information.

It is vital that Finance can provide assurance to third parties for the purposes of the FOI Act, that information communicated in confidence will remain confidential. If Finance is unable to uphold the treatment of confidential information owned by third parties, there is a risk of detriment to the ability of Finance to obtain such information in the future.

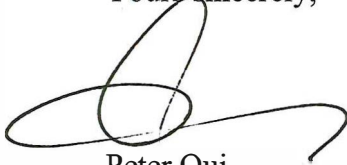
Therefore, I consider that the documents and information that is within scope of your request is exempt from release under subsection 45(1) of the FOI Act, as it contains material that was obtained in confidence.

Review and appeal rights

You are entitled to request an external review by the Office of the Australian Information Commissioner (OAIC) of my decision within 60 calendar days, being on or before **Monday 29th April 2024**. The process for review and appeal rights is set out at **Attachment C**.

If you have any questions regarding this request, please contact the FOI Team.

Yours sincerely,



Peter Qui
First Assistant Secretary
ICT Division
Department of Finance
February 2024