

Friday, 1 March 2024

Eliza Sorensen

eSafety ref: FOI 24101

**By email:** [foi+request-10994-7e02a771@righttoknow.org.au](mailto:foi+request-10994-7e02a771@righttoknow.org.au)

Dear Mx Sorensen

### **Decision on access to documents under the *Freedom of Information Act 1982***

The purpose of this letter is to give you a decision about access to documents that you requested from the eSafety Commissioner (eSafety) under the *Freedom of Information Act 1982* (FOI Act).

I am authorised under section 23(1) of the FOI Act to make decisions under that Act.

### **Background**

On 1 January 2024, you requested access to:

*‘any documents such as internal or external correspondence, briefings, minutes, memos, research, policies and manuals that played a role in shaping eSafety’s understanding and subsequent definition of “Cheese Pizza”, an alleged shorthand for “Child Pornography” covering the period beginning on the 1 July 2021 and ending on the date you confirm receipt of this FOI Request.*

- 1. Any documents that reference the term “Cheese Pizza” or contributed to the asserted definition of the term.*
- 2. Internal or external correspondence mentioning, discussing or contributed to the asserted definition of the term “Cheese Pizza”.*
- 3. Briefings, minutes, and memos that discuss or contributed to the asserted definition of the term “Cheese Pizza”.*
- 4. Research materials or studies that contributed to the asserted definition of the term “Cheese Pizza”.*
- 5. Policies or manuals that mention or provide guidance on the term “Cheese Pizza”*
- 6. Internal Dictionaries or Glossary entries that mention or assert the definition of the term “Cheese Pizza”.*

*This request has been prompted following the eSafety Commissioner’s submission to the Joint Committee on Law Enforcement, which lacked supporting references regarding the phrase and its origins — with this definition being reiterated by Julie Inman Grant which featured in an article in the Sydney Morning Herald’ (citations omitted)*

Your request goes on to note:

*‘I believe this request is in the public interest as the phrase has an association with a widely known and debunked conspiracy theory. Public confidence in the eSafety Commissioner’s office is paramount, and understanding the context surrounding this term contributes to transparency and trust.’ (citation omitted)*

This section of your request cites a 2022 article from the *Journal of the American Academy of Psychiatry and the Law*<sup>1</sup> that tracks the ‘pizzagate’ conspiracy theory, and implies concern that this conspiracy theory might be informing, or at least be seen to inform, eSafety’s approach to certain issues or practices.

I am not aware of any such perception in the community about eSafety, but agree with you that public confidence in the work of the Office of the eSafety Commissioner is paramount. I hope that this decision provides some clarity around the use of this term.

You will see from some of the documents disclosed to you in this decision that eSafety’s remarks about the term ‘cheese pizza’ in our submission to the Australian Parliament’s Joint Committee on Law Enforcement and in subsequent media are based on eSafety’s experience as an enforcement body in this field including our connections with law enforcement.

This term and its corresponding emoji have been in use for more than a decade and have been seen regularly by eSafety investigators and our colleagues in law enforcement as code among offenders to signal child sexual abuse material. Although not the source of our understanding of the term, we have been able to track its usage back at least as far as a 2012 book by Bloomberg technology journalist Parmy Olson<sup>2</sup>, which pre-dates the ‘pizzagate’ conspiracy theory by several years. eSafety references to ‘cheese pizza’ cited in your request were drawn from these longstanding investigative signals and are not based on, or intended to provide any credence to, the ‘pizzagate’ conspiracy theory or any other conspiracy theory.

As set out below, the FOI Act does not apply to documents that set out how to access, or that are likely to facilitate access to, certain kinds of material including child sexual abuse material. I note that several of the attachments to document 8, which have not been released to you for this reason, include prominent use of the terms ‘cheese pizza’ and ‘cp’ and pizza-based imagery. Accounts shown in these attachments were later referred by eSafety to the Australian Centre to Counter Child Exploitation (commonly known as the ACCCE), a specialist division of the Australian Federal Police.

## **Decision**

I have identified 13 documents falling within the scope of your request, which are listed in the attached schedule.

Documents 3, 6, 7, 8 and 9 are exempt from the operation of the FOI Act under section 7(2), but I have decided to release them in part. Attachments to document 8 are also exempt the operation of the FOI Act under section 7(2) and will not be released.

I have decided to refuse access to document 10 under section 37(2)(b) of the FOI Act. I have also decided that parts of documents 3 and 7 are exempt under section 37(2)(b) of the FOI Act and have therefore decided to release these documents in part.

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<sup>1</sup> Holoyda B (2022) ‘QAnon: A Modern Conspiracy Theory and the Assessment of its Believers’, *The Journal of The American Academy of Psychiatry and the Law*, 50(1):124-135, doi:10.29158/JAAPL.210053-21.

<sup>2</sup> Olson P (2012), *We Are Anonymous*, Little, Brown & Company, Boston.

I have decided to refuse access to document 4 under section 47C of the FOI Act.

I have decided that parts of documents 8 and 12 are exempt under section 47F of the FOI Act and have therefore decided to release these documents in part.

My reasons for my decision on this matter are set out in the balance of this letter.

### **Material taken into account**

I have taken the following material into account in making my decision on access:

- the scope of your request
- the content of the documents in scope of your request
- the relevant provisions of the FOI Act
- responses from the third parties we consulted
- advice from eSafety staff
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

### **Reasons for decision**

The attached schedule of documents provides a description of each document and my decision on access for each one. The reasons for my decisions are outlined below.

I have referred to section 22 of the FOI Act in the schedule to indicate some parts of documents are out of scope of your request, as agreed with you:

- By email dated 10 January 2024, you agreed that the names and personal information of public servants would not be relevant to your request, and would be redacted from any documents released to you under section 22 of the FOI Act.
- By email dated 10 February 2024, you agreed with eSafety's proposal to release only one copy of slides appearing in multiple PowerPoint presentations delivered by eSafety where the majority of the presentation is not relevant to your request and slides that are relevant are substantively identical in each version of the presentation. These slides appear in document 9. The remainder of document 9 has been omitted under section 22 of the FOI Act.

### **Exemptions**

#### *Section 7(2) of the FOI Act – Class 1 material*

Documents 3, 6, 7 and 9 identified in the attached Schedule contain URLs and IP addresses that may be used to access or facilitate access to Class 1 material as defined in the *Online Safety Act 2021* (OSA), specifically child sexual abuse material. Attachments to document 8 provide details of social media accounts that may be used to access or are likely to facilitate access to this material.

A number of documents listed above also include terms and symbols used among offenders to locate and distribute Class 1 material, which is likely to facilitate access to the same.

Each of the above is 'exempt online content scheme material' as defined in section 4 of the FOI Act. Section 7(2) and Schedule 2, Part II of the FOI Act together provide that material of this nature is exempt from the operation of the FOI Act.

I therefore consider that the FOI Act does not apply to this material and it has been redacted (or, in the case of attachments to document 8, omitted) accordingly.

I acknowledge that there is apparent tension between releasing documents confirming 'cheese pizza' as a codeword for child sexual abuse material on the one hand, while determining on the other that different codewords and symbols referred to in the same documents are not subject to the FOI Act and will not be disclosed. However, given the public nature of release under the FOI Act, I consider that disclosure of these additional terms and symbols would likely assist would-be offenders in locating and distributing Class 1 material, while the 'cheese pizza' term and its use are already well-known.

#### *Section 37(2)(b) of the FOI Act – lawful methods of investigation and enforcement*

Section 37(2)(b) provides that a document is exempt if its disclosure would, or could reasonably be expected to, disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

Documents 3, 7 and 10 identified in the attached schedule contain information about eSafety's procedures for preventing, detecting, investigating or otherwise dealing with breaches or evasions of the law (specifically the OSA) that, if released, would be likely to prejudice eSafety's ability to perform these functions.

Documents 3 and 7 are summaries of investigations into online material confirmed to be Class 1 material, and include details about steps taken by investigators to investigate and deal with breaches of the OSA.

Document 10 is a recording of a meeting between eSafety personnel and a prospective contractor about potential acquisition of services. Methods for detecting and preventing distribution of Class 1 material on online platforms are discussed, along with terminology known to be used by offenders (including 'cheese pizza').

I consider that release of this information would be likely to assist offenders in evading detection and prejudice eSafety's regulatory and enforcement operations. I have therefore decided to exempt parts of documents 3 and 7 from release and to refuse access to document 10 in full under section 37(2)(b) of the FOI Act.

#### *Section 47C of the FOI Act – deliberative material*

Section 47C provides that a document is conditionally exempt if its disclosure would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the

purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth.

Document 4 contains informal staff notes taken during a meeting between eSafety personnel and another agency of the Australian Government regarding a regulatory process, namely the submission of draft online safety industry codes under the OSA. The note reflects consultation and opinions expressed in the course of a deliberative process involving a core function of eSafety.

I therefore consider Document 4 is conditionally exempt under section 47C of the FOI Act.

#### *Public interest considerations – section 47C*

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless release would, on balance, be contrary to the public interest. Section 11B(3) sets out matters favouring access that must be taken into account in considering whether release is in the public interest.

For all of the material identified above as conditionally exempt, I consider that disclosure would generally promote the objectives of the FOI Act, would enhance the scrutiny of government decision making and could inform debate on matters of public importance.

Against release, I find a public interest in preserving the confidentiality of government processes in circumstances where disclosure would undermine the effectiveness of regulatory processes and reduce engagement and collaboration between agencies. This is particularly so where relevant discussions and deliberations remain relevant to ongoing regulatory processes – in this case, industry standards currently being prepared by eSafety arising from the same notices issued to industry representatives under section 141 of the OSA. Disclosure would risk rendering these regulatory processes less effective at achieving the objects of the OSA, which include promoting and improving the online safety of Australians.

On balance, I consider there are overriding public interest factors against disclosure of document 4 identified in the attached Schedule. I have therefore decided this material is exempt under section 47C of the FOI Act.

I have not taken into account any of the ‘irrelevant factors’ set out in section 11B(4).

#### *Section 47F of the FOI Act – personal privacy*

Section 47F of the FOI Act provides that a document is conditionally exempt if disclosure would involve the unreasonable disclosure of personal information of any person.

‘Personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

Documents 8 and 12 contain identifying information about members of the public who have engaged with eSafety to report either child sexual abuse material or adult cyber abuse. I consider that disclosure of this information would be unreasonable because it is not well known and publication of their personal information could reasonably be expected to

negatively impact upon on these individuals, particularly individuals who are already subject to online abuse. Publishing personal details about these individuals may put them at risk of harm.

Document 12 is an adult cyber-abuse complaint from an individual who has been subject to threatening behaviour, where cheese pizza imagery has been used in an (unfounded) allegation of paedophilia against them. In the circumstances, I consider that disclosure of this document, even in partly redacted form, would amount to an unreasonable disclosure of personal information about this individual.

I therefore consider that parts of documents 8 and all of document 12 are conditionally exempt under section 47F of the FOI Act.

*Public interest considerations – section 47F*

As set out above for section 47E(d), I must weigh public interest factors for and against release of the material conditionally exempt under section 47F.

For all of the material identified above as conditionally exempt, I consider that disclosure would generally promote the objectives of the FOI Act and may enhance the scrutiny of government decision making. I do not consider that there is significant public interest in disclosing the personal information of these individuals, or that disclosure would add to legitimate public scrutiny of eSafety's work.

Against this, I consider that there is a public interest in maintaining the personal privacy of individuals who engage with eSafety to report unlawful material and online abuse. I consider that the public interest in maintaining this confidentiality outweighs the public interest in release of this information, and accordingly find that release of this information would not be in the public interest.

I therefore find that parts of document 8 and all of document 12 are exempt. In reaching this conclusion, I have not taken into account any of the 'irrelevant factors' set out in section 11B(4).

Yours sincerely,



Luke Boon  
Executive Manager, Investigations

**Attachments**

1. Schedule of documents
2. Rights of review

## **ATTACHMENT 1: SCHEDULE OF DOCUMENTS**

<b>Number</b>	<b>Date</b>	<b>Description</b>	<b>Decision on access</b>	<b>Exemptions or deletions</b>
1	30/09/2022	eSafety internal email 'International, Strategy and Futures Roundup'	Release in full, irrelevant material deleted	s 22
2	30/09/2022	eSafety internal email re 'algorithmspeak' (quoting from document 1)	Release in full, irrelevant material deleted	s 22
3	8/11/2022	eSafety investigation summary – INV-2022-26816	Release in part	s 7(2), 22, s 37(2)(b)
4	11/11/2022	Meeting notes – eSafety and OAIC re phase 1 industry codes	Exempt in full	s 47C
5	5/01/2023	eSafety internal MS Teams message re pizza emoji	Release in full, irrelevant material deleted	s 22
6	25/01/2023	eSafety investigation summary – INV-2023-02104	Release in part	s 7(2), s 22
7	30/01/2023	eSafety investigation summary – INV-2023-02378	Release in part	s 7(2), s 22, s 37(2)(b)
8	23/04/2023	Email report re child sexual abuse material appearing on Instagram	Release in part	s 7(2), s 47F
9	12/05/2023	eSafety PowerPoint presentation to NSW Police	Release in part	s 7(2), s 22

10	14/08/2023	Meeting recording – vendor presentation by Active Fence to eSafety	Exempt in full	s 37(2)(b)
11	24/08/2023	eSafety internal MS Teams message re platform behavioural signals scanning	Release in full, irrelevant material deleted	s 22
12	01/08/2023	Adult cyber-abuse complaint ACA-2023-0208164	Exempt in full	s 47F
13	20/11/2023	<i>Sydney Morning Herald</i> article re eSafety phase 1 industry standards	Release in full	