



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2024/014

To Trav S

foi+request-11016-5ce12adc@righttoknow.org.au

Dear Trav S

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 11 January 2024.

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

Scope of request

You set out your request in the following terms:

This request for information is made in accordance with the FOI Act. Please refer your department's 10 Jan 2024 disclosure Ref No. FOI/2023/349. Please provide a copy of the disclosed document with the information that is redacted from that document via section 22 (1)(a)(ii) disclosed.

I expect all Australian government email addresses to be included in the disclosure. OAIC holds the view that it is generally not unreasonable for public servants' names to be disclosed in response to an FOI request. FOI memorandum No. 94 states:

"It was not Parliament's intention to provide anonymity for public [sic] officials each time once of them is mentioned in a file. That would be contrary to the aims of the FOI Act and would not assist in promoting openness or accountability."

There are no special reasons that make disclosing public servant's email addresses unreasonable in this case. I have explicitly asked for their disclosure and they are therefore clearly not irrelevant to this request.

Please note, my legally enforceable right of access sits above your department's internal policy of not disclosing non-SES email addresses.

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 document relevant to your request
- the FOI Act
- the Guidelines issued by the Information Commissioner¹ (the FOI Guidelines)
- the views of third parties consulted by the Department

Document in scope of request

The Department has identified one document that falls within the scope of your request.

Decision

I have decided to grant access in part, on the basis that the document contains information exempt under:

- Section 47F – personal privacy

Reason for decision

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

1. Personal privacy (section 47F of the FOI Act)

Section 47F(1) of the FOI Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person*

...

For the purposes of the FOI Act, I note that 'personal information' has the same meaning as in the *Privacy Act 1988* (the Privacy Act).

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 is known to be associated with the matters in the document

¹ s 93A of the FOI Act

- (c) *the availability of the information from a public source; and*
- (d) *any other matters relevant, for example if it is reasonable to suspect the person would expect their information to be released as part of an FOI request.*

Parts of the document contain the names and contact information of third party individuals. I am satisfied that the identified personal information is not well known and not currently available through a public source, and that 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 individuals would not expect their information to be disclosed. In the making of my assessment, I have consulted with relevant third parties.

As discussed in the leading section 47F IC review decision of *'FG' and National Archives of Australia [2015] AICmr 26*, other factors considered to be relevant include the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.²

As your request has been made through the Right to Know website, information released in response to your request will be published online, available to a broad audience. I consider this widespread publication to be an unreasonable disclosure of personal information. I also note that the requirement to publish information released to an FOI applicant on a disclosure log does not apply to personal information if publication would be "unreasonable".³

I consider that the release of this material constitutes an unreasonable disclosure of personal information. Accordingly, I am satisfied that parts of the document are conditionally exempt under section 47F(1) of the FOI Act.

Having found the documents to be conditionally exempt, I am required to apply the public interest test as set out in section 11B of the FOI Act. The public interest exemption factors are discussed below.

2. 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 interest⁴. In determining whether its disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors.

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, this includes:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government*

² Part 6.143, FOI Guidelines

³ Part 14.24, FOI Guidelines

⁴ s 11A(5) of the FOI Act

- b) access to the document could result in any person misinterpreting or misunderstanding the document*
- c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made*
- d) access to the document could result in confusion or unnecessary debate*

In applying the public interest, I have noted the objects of the FOI Act⁵ and the factors favouring access as listed in s 11B(3) of the FOI Act. Having regard to the material before me and the circumstances of the documents found to be conditionally exempt I am satisfied of the following:

- access would promote the objects of the FOI Act⁶
- the subject matter within the conditionally exempt documents does not seem to have the character of public importance
- the subject matter within the conditionally exempt documents does not offer any insights into public expenditure

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 interest⁷. 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.

The main factor against disclosure in this case is that disclosure of the information could reasonably be expected to prejudice an individual's right to personal privacy.

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 for internal review or Information Commissioner review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter.

⁵ s 3 of the FOI Act

⁶ s 11B(3)(a) of the FOI Act

⁷ s 11B(5) of the FOI Act

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days from the date it is received.

Applications for review should be sent to foi@pmc.gov.au.

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](#).⁸

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](#).⁹

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

Yours sincerely



Branko Ananijevski
A/g Assistant Secretary
Department of the Prime Minister and Cabinet
12 February 2024

⁸ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

⁹ <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>