

FOI-2024-10017

22 February 2024

AJB

Email: foi+request-11044-194dbff7@righttoknow.org.au

Dear AJB

Freedom of Information request – Part access decision

1. I refer to your request of 23 January 2024 to this Office under the *Freedom of Information Act 1982* (FOI Act). Your request for documents was framed in the following way:

According to the Commonwealth Ombudsman Disclosure Log, on 3 November 2023, the Ombudsman granted access to emails or other communications directed at all staff about the Royal Commission on the Robo-debt Scheme. The Commonwealth Ombudsman reference is FOI-2023-10082. A full disclosure was made of 3 documents and a partial disclosure was made of 10 documents.

Please grant access to the disclosed documents (3 fully disclosed and 10 partially disclosed) under the FOI Act by reply email.

2. On 20 February 2024 I wrote to you requesting an extension under s 15AA of the FOI Act. In this correspondence I explained:
 - A. One document has been determined as not appropriate for uploading on the disclosure log as it is an autogenerated transcript of a recording of an all-staff discussion, which due to misinterpretation of the words spoken by the auto-generation technology, had a significant number of errors which are, in sections, quite distorting of the original recording.
 - B. The disclosure log requirement does not apply if publication of that information would be 'unreasonable' (ss 11C(1)(c) and 11C (2) of the FOI Act) including information covered by the Information Commissioner's Freedom of Information (Disclosure Log – Exempt Documents)

Determination 2018. The Explanatory Statement accompanying the Information Commissioner's Determination says:

The Commissioner ... recognises that an agency or Minister may decide that it is appropriate to provide access to an exempt document to a particular FOI applicant but that it would be unreasonable to publish the document more widely. For example, an agency may have released an exempt document to a particular FOI applicant in connection with a research project, in connection with legal proceedings in which the FOI applicant is involved, or because the confidential nature of information in a document would not be jeopardised by selective release to a particular FOI applicant. In these circumstances, the agency or Minister may decide that it is unreasonable to publish this information more widely in a disclosure log.

- C. I made the decision not to exempt the transcript in full, noting the applicant's identity in FOI-2023-10082. However, at the time, I was of the view publishing the document more widely would be unreasonable, noting its errors and candid nature. For this reason, I was required to consult internally on the release of this document, noting the decision for your request would be published widely on the Right to Know website.
3. Later on 20 February 2024 you wrote to say you did not agree to an extension of time under s 15AA of the FOI Act. You instead proposed our Office send 12 of the 13 documents to you via Right to Know, and all 13 documents, including the transcript, to your private email address by 22 February 2024.
 4. As your identity remains anonymous and you have previously engaged with publishing documents via the Right to Know website, our Office does not accept this proposal. Instead my decision is as follows.

Decision

5. 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.
6. Our Office identified thirteen (13) documents within the scope of your request. I have decided:
 - To refuse access to 1 document in full.

- To grant access to 3 documents in full.
 - To grant access to 9 documents in part.
7. Our Office identified the documents by searching our electronic records management systems and electronic documents saved on shared or network drives.
 8. I attach the 12 documents with this notice.
 9. A schedule setting out my decision in relation to the relevant documents is at **Attachment A**.

Reasons

Material taken into account

10. 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;
 - advice from the Ombudsman;
 - 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

11. 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

12. 9 documents have been partially released to you, and 1 document has been exempt in full, as set out in the attached Schedule of Documents.
13. I have redacted the following:
 - A. Surnames and contact information of Ombudsman staff;

- B. Information revealing an internal 'Q and A' session;
- C. Information revealing trade secrets and commercially valuable information;
- D. Irrelevant material.

14. I have addressed categories A–D below.

15. I have relied on four conditional exemptions, and one general exemption to redact those documents, being:

- A. The personal privacy exemption (s 47F FOI Act);
- B. The agency operations exemption (s 47E of the FOI Act);
- C. The trade secrets or commercially valuable information exemption (s 47 of the FOI Act);
- D. The exempt or irrelevant material exemption (s 22 of the FOI Act).

A. Names and contact information of Ombudsman Staff

16. Where referenced in the schedule, I have redacted the surnames and contact details of 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 and contact information, including phone numbers and direct email addresses. 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 agency provides 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. I consider this may subject staff members to inappropriate contact and be to their detriment.

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 public participation in Government processes or contribute to scrutiny and discussion 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 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 and direct contact information of Ombudsman and staff.

Reasonable expectation

32. The Ombudsman has established generic contact points and procedures in place for members of the public to communicate with the Office. Disclosure of direct contact details would undermine this and 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. I am not of the view that in this instance access to the personal information of public servants would increase public participation in Government processes or contribute to scrutiny and discussion around government decisions and investigations. Further, 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)).

36. 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.

Therefore, I have concluded that this disclosure at this time would be, on balance, contrary to the public interest.

B. An internal 'Q and A' session

37. The transcript includes a 'Q and A' session with the Ombudsman. The entirety of the session, including the Ombudsman's introduction and responses, is exempt from production under s 47E(d) of the FOI Act.

38. Please also note the transcript, when released to the applicant of FOI-2023-10082, had the following information redacted:

- i. Surnames and contact information of Ombudsman staff
- ii. Information in relation to Ombudsman investigations
- iii. Information regarding internal audits and review
- iv. An internal 'Q and A' session
- v. Information revealing deliberative processes
- vi. Information revealing trade secrets and commercially valuable information
- vii. Irrelevant material

39. The redactions relied on to exempt this material were:

- i. s 47F of the FOI Act (unreasonable disclosure of personal information)
- ii. s 47E(d) – (substantial adverse effect on agency operations)
- iii. s 47C of the FOI Act (deliberative processes)
- iv. s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)

40. However, given I am exempting this document in full under s 47E(d) of the FOI Act for the reasons provided from paragraph 41-56, I will not canvas in detail the reasons these exemptions were applied to the transcript in FOI-2023-10082.

Reasonable expectation

41. The town hall meeting was a frank internal discussion, intended solely for staff, and recorded so staff who were unable to attend could watch the recording. In my view, public disclosure of a meeting which staff understood to be limited to an

internal audience, poses a real risk to the willingness of staff to participate fully in such future discussions.

42. The disclosure of internal candid discussion could reasonably be expected to stifle such discussions in future. The ability to speak candidly and frankly when discussing administration of the Ombudsman's functions ensures the Office remains robust and dynamic. If officers do not feel they can candidly and frankly communicate with each other to discuss, question, suggest and workshop ideas, this could reasonably be expected to stifle such future discussion.

43. Additionally, the quality of the auto-generated transcript is so poor that publication could materially mislead people as to a range of the matters discussed. Such misinformation could create misguided views of the Office and in turn have a substantial adverse effect on the proper and efficient conduct.

44. Finally, information in the transcript includes content that relates to completed and ongoing Ombudsman investigations. This information is exempt from production under s 47E(d) of the FOI Act.

45. Ombudsman investigations are dealt with in private pursuant to s 8(2) of the *Ombudsman Act 1976*, and Ombudsman officers are to observe confidentiality with respect to information disclosed under the Act (see s 35).

46. As noted in *Australian Broadcasting Corporation and Commonwealth Ombudsman* [2012] AICmr 11 (26 April 2012) ('ABC') at [33]:

"the Ombudsman Act establishes a framework within which the Ombudsman's investigations are conducted in private, and information disclosed or obtained under the Act is treated confidentially...Disclosure, under the FOI Act, of information provided to the Ombudsman by complainants in such circumstances would affect the willingness of people to make complaints to the Ombudsman in the future. That would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman's operations"

47. The release of information about an Ombudsman's investigation could reasonably be expected to discourage agencies and officers of agencies, from making complaints and providing information request under s 8 of the

Ombudsman Act to the Ombudsman, particularly if they knew such information would be disclosed publicly.

48. Those who make complaints to the Ombudsman must be assured that their complaints will be treated in confidence. Release of information, in particular personal information linked to a complaint or investigation could reasonably be expected to discourage future complaints.
49. We submit that public detriment will arise if the Ombudsman is compromised in our Office's ability to obtain confidential information in future Ombudsman Act investigations.
50. Disclosure would reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman, disclosure would reasonably be expected to prejudice the Ombudsman's ability to obtain confidential information; and disclosure would reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

Public interest

51. 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.
52. 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 – 6.19] and [6.22], as well as matters particular to the Ombudsman's functions and operating environment.
53. Factors favouring disclosure include that disclosure would:
 - i. promote the objects of the FOI Act, including to:
 - ii. inform the community of the Government's operations, including, in particular,
 - a) the practices followed by the Government in its dealings with external agencies

- b) reveal the reason for a government decision and any background or contextual information that informed the decision
- c) enhance the scrutiny of government decision making
- iii. inform debate on a matter of public importance, including to:
 - a) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official
- iv. contribute to the administration of justice generally, including procedural fairness; and
- v. promote effective oversight of public expenditure.

54. Factors against disclosure include that disclosure could:

- i. reasonably be expected to prejudice the protection of an individual's right to privacy, in particular individual officers of the Ombudsman
- ii. reasonably be expected to affect the ability of staff members to fulfil their duties
- iii. have a substantial adverse effect on the management of Office personnel
- iv. reasonably be expected to prejudice the proper and efficient conduct of investigations by the Ombudsman (see FOI Guidelines 6.22(1))
- v. could reasonably be expected to affect the ability of the agency to receive confidential or candid communications

55. I note that disclosure under the FOI Act is generally to be considered to the world at large.

56. 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 significant weight to the proper and efficient conduct of Ombudsman's investigative and the departments' functions and processes not being impeded. I find that disclosure at this time would be contrary to the public interest.

C. Information revealing trade secrets and commercially valuable information

57. I am of the view that parts of documents 3, 4, 7, 8, 9, 10, and 13, as indicated on the schedule, are exempt in accordance with s 47 of the FOI Act.

58. 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

59. Documents 3 and 7 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

60. Documents 8 and 9 include information about the use of certain communication computer systems software operated by the Office. Documents 4, 10 and 13 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.

61. For the reasons outlined at 49 and 50, I have refused access to parts of documents 3, 4, 7, 8, 9 and 13 under s 47(1)(b) of the FOI Act.

D. Irrelevant material

62. I provide access to an edited copy of 1 relevant document to you with irrelevant material removed in accordance with s 22 of the FOI Act.

Review rights

Internal review

63. 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.

64. 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.

65. 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

66. 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
- 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

67. 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

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

69. 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.

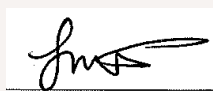
70. You may lodge your complaint either:

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

Contact details

71. 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-2024-10017

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
1.	July 2023	2 (1-2)	Robodebt Royal Commission – Analysis of Recommendations – Paper from July Executive Committee Meeting.	Full access	N/A	N/A
2.	22 August 2022	22 (3-24)	Commonwealth Ombudsman Corporate Plan 2023-2024. Senior Executive Staff reviewed this document in July and August. Contained in the Ombudsman's foreword and pg. 13 are references to Robodebt Royal Commission.	Full access	N/A	N/A
3.	10 July 2023	2 (25-26)	Robodebt Royal Commission Report Guidelines. This Guidance document sets out instructions for Complaints Officers on how to respond to contacts, or other enquiries/complaints in relation to the Report of the Royal	Partial access	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information) Conditionally exempt under s 47E(d) –	<ul style="list-style-type: none"> Surnames of Ombudsman staff redacted. Terminology showing the use of the relevant computer systems software redacted.

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
			<i>Commission into the Robodebt Scheme.</i>		<i>(substantial adverse effect on agency operations) Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)</i>	
4.	12 July 2023	41 (27-67)	<i>Transcript All-Staff Town Hall Royal Commission into the Robodebt Royal Commission Report</i>	Exempt in full	<i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i>	<ul style="list-style-type: none"> An internal 'Q and A' session.
5.	7 July 2023	5 (68-72)	<i>Intranet Post – A Message from the Ombudsman – Robodebt Royal Commission Report</i>	Full access	N/A	N/A
6.	10 July 2023	1 (73)	<i>Intranet post – Release to VOLT of Guidance for Complaint Officers on responding to contacts about the RRC report</i>	Partial access	<i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i>	<ul style="list-style-type: none"> Surnames of Ombudsman staff redacted. Online link to Guidance document.

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
					Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	
7.	10 July 2023	2 (74-75)	Guidance document in VOLT – Robodebt Royal Commission Report	Partial 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) Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)	<ul style="list-style-type: none"> • Surnames of Ombudsman staff redacted. • Terminology showing the use of the relevant computer systems software redacted.
8.	10 July 2023	2 (76-77)	Weekly Exec meeting – possible discussion between Ombudsman, Deputy	Partial access	Conditionally exempt under s 47F of the FOI Act	<ul style="list-style-type: none"> • Surnames and direct contact information of

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
			<i>Ombudsman and Senior Assistant Ombudsmans about the report</i>		<p>(unreasonable disclosure of personal information)</p> <p>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</p> <p>Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)</p>	<p>Ombudsman staff redacted.</p> <ul style="list-style-type: none"> Terminology showing the use of the relevant computer systems software redacted.
9.	12 July 2023	2 (78-79)	<i>All staff town hall invite - Royal Commission into the Robodebt scheme report</i>	Partial access	<p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p> <p>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</p>	<ul style="list-style-type: none"> Surnames of Ombudsman staff redacted. Terminology showing the use of the relevant computer systems software redacted.

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
					Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)	
10.	20 July 2023	1 (80)	Intranet post – Recording available – All-staff town hall about Robodebt Royal Commission	Partial 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) Exempt under s 47 of the FOI Act (Documents disclosing trade secrets or commercially valuable information)	<ul style="list-style-type: none"> • Surnames of Ombudsman staff redacted. • Terminology showing the use of the relevant computer systems software redacted.

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
11.	6 July 2023	2 (81-82)	Email trail between HR and Execs about staff support strategies post RRC Report release	Partial 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)	Surnames and direct contact information of Ombudsman staff redacted.
12.	6 July 2023	3 (83-85)	Intranet post – A message from the Ombudsman	Partial 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) Exempt under s 22 of the FOI Act (Access to edited copies with exempt or irrelevant	<ul style="list-style-type: none"> • Surnames of Ombudsman staff redacted. • Irrelevant information – Office updates from Ombudsman to Officers.

Doc No.	Date Received	Pages	Description of Document	Decision on access	Exemption	Information Redacted
					<i>matter deleted)</i>	
13.	7 July 2023	1 (86)	<i>Email from Brett to SLG</i>	Partial access	<p><i>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</i></p> <p><i>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</i></p>	<ul style="list-style-type: none"> • <i>Surnames and direct contact information of Ombudsman staff redacted.</i>