

FOI 2024 10017

24 March 2024

By email to: foi+request_11044_194dbff7@righttoknow.org.au

Dear AJB

Internal Review of FOI Decision

Thank you for your request for review under the *Freedom of Information Act 1982* (FOI Act) dated 23 February 2024. I have completed a review of the decision, and I am writing to advise you of the outcome.

Your Request & Initial Decision

1. On 23 January 2024, you made an FOI request to our Office. Your request stated:

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 22 February 2024, the initial decision maker provided 12 of the documents you requested and decided that one document (an automatically generated transcript of a staff meeting) was exempt. On 23 February 2024 you requested a complete review of the decision.
3. I have completed an internal review of the initial decision in this matter. I have changed some of the reasons for our decision, but I have not made any changes to the information that has been released to you in this matter. I am an officer authorised under s 23 of the FOI Act to make decisions in relation to FOI requests.

4. This letter constitutes my notice of decision.
5. In making my review decision I had regard to the following:
 - a. the terms of your request;
 - b. the content of the documents you requested;
 - c. relevant provisions of the FOI Act; and
 - d. Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, available at www.oaic.gov.au (FOI Guidelines).

Documents 1-3 and 5-13

6. Many of the concerns raised in your request for review relate to redactions which appear in documents 1 to 3, and 5 to 13. You note that several of the names that have been redacted are readily identifiable on the basis of publicly available information. You similarly note that the names of agency systems that have been redacted are identifiable.
7. In my view the decision we provided on 22 February 2023 was misleading. The decision stated that you had been provided with 'partial access' to documents 1 to 3 and 5 to 13. The decision letter included text justifying deletions which were made from the text. In fact, the copies of all documents we disclosed to you were identical to the ones disclosed to the applicant in FOI 2023 10087. All of the redactions you have raised concerns about appear in the documents which you requested. In my view, our Office has provided complete copies of "*the disclosed documents*" as per your original request.
8. I understand the concerns you have raised about the redactions which were applied in FOI 2023 10087, however in my view it would not have been appropriate to revisit the original redactions at the point of subsequent disclosure to you.
9. If you would like us to reconsider these deletions, it is open to you to lodge a new FOI request for "the original documents considered for release in relation to FOI 2023 10082". We can then consider afresh what deletions are necessary, taking into account the points you have raised in your email on 23 February 2024.

10. I have provided a revised schedule of documents at Attachment A, which more accurately describes our decision in relation to each document, although it does not change the material released to you.

Transcript of staff meeting

11. Your review request also notes that you would like access to Document 4 – an automatically generated transcript of the all staff meeting on 12 July 2023. You have highlighted that s 11B(4) of the FOI Act expressly states that certain factors must not be taken into account in deciding whether access to a document would be contrary to the public interest. You argue that this is incompatible with paragraph 43 of the original decision. You have also indicated that you do not believe confidential information would have been shared in this forum.
12. I have carefully considered these arguments, but I have decided not to change our decision to exempt Document 4. I agree with the original decision maker that disclosure in these circumstances would have a substantial adverse effect on operations of this agency and is against the public interest, and the document is therefore conditionally exempt under s 47E of the FOI Act.
13. This is because:
 - a. The purpose of the meeting was to allow a candid discussion of the outcomes of the Royal Commission among staff, and for staff to ask questions of the executive about the topic. In my view it is necessary to the proper management of personnel to offer an opportunity for staff to discuss and debrief after a significant event. In my view, the knowledge that a transcript of discussion might be publicly disclosed would be reasonably likely to inhibit such discussions in the future and would therefore have a substantial adverse effect on the agency's management of staff.
 - b. The automatically generated transcript of the meeting is of a very low quality and materially misrepresents what occurred at the meeting. These errors are more than merely typographical, and at some points impact the meaning of what was said during the meeting. In these circumstances, disclosing the transcript would amount to publishing

incorrect information about the views of the Ombudsman and staff on this topic.

For the avoidance of doubt, I am not taking into account that access to the document could result in a person misinterpreting or misunderstanding the document. Rather I consider that the document is not a true record of what was said in the meeting, and circulating an inaccurate record of our views could compromise confidence in the Office. This would be reasonably likely to inhibit willingness to share complaints with our Office and the persuasiveness of our conclusions.

- 14.** For completeness I note that the full transcript also includes some discussion of completed and ongoing Ombudsman investigations and other confidential activities of the Office. It also includes names and other personal information of staff that it would be unreasonable to disclose. I acknowledge your view that confidential information would not be shared in an all staff meeting, however on my review of the document I have formed the view that it does. However, in my view this information could be removed through selective deletions, and this is not determinative in relation to my decision to exempt the whole document.
- 15.** 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.
- 16.** I have taken a number of matters into account in making this assessment, including 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.
- 17.** I do not believe that in this instance access to the document would promote the objects of the FOI Act, inform debate on a matter of public importance, promote effective oversight of public expenditure or allow a person to access his or her personal information.
- 18.** In my view disclosure of incorrect information about what was said in an internal meeting does not serve to increase transparency about a matter of public importance. The Ombudsman has published a statement in response to the

findings of the royal commission, which provides far better public visibility of his views on the outcome.

- 19.** On balance I consider that most of the public interest factors support the conclusion that disclosure of the transcript would not be in the public interest.

If you are dissatisfied with my internal review decision, you can apply to the Office of the Australian Information Commissioner (OAIC) for review within 60 days. More information about the OAIC review is available on its website.

Yours sincerely

Matt Jackson

Assistant Director – Legal

Attachment A: Decision on each document

Attachment A

	Date Received	Pages	Description of Document	Decision on access	Exemption
1.	July 2023	2 (1-2)	<i>Robodebt Royal Commission – Analysis of Recommendations – Paper from July Executive Committee Meeting.</i>	Full access	N/A
2.	22 August 2022	22 (3-24)	<i>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.</i>	Full access	N/A
3.	10 July 2023	2 (25-26)	<i>Redacted copy of Robodebt Royal Commission Report Guidelines.</i>	Full access	
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>
5.	7 July 2023	5 (68-72)	<i>Intranet Post – A Message from the Ombudsman – Robodebt Royal Commission Report</i>	Full access	
6.	10 July 2023	1 (73)	<i>Redacted copy of Intranet post – Release to VOLT of Guidance for Complaint Officers on responding to contacts about the RRC report</i>	Full access	
7.	10 July 2023	2 (74-75)	<i>Redacted copy of Guidance document in VOLT – Robodebt Royal Commission Report</i>	Full access	
8.	10 July 2023	2 (76-77)	<i>Redacted copy of Weekly Exec meeting – possible discussion between Ombudsman, Deputy Ombudsman and</i>	Full access	

Senior Assistant Ombudsman about the report

- | | | | | |
|-----|--------------|-----------|---|--------------------|
| 9. | 12 July 2023 | 2 (78-79) | Redacted copy of all staff town hall invite - Royal Commission into the Robodebt scheme report | Full access |
| 10. | 20 July 2023 | 1 (80) | Redacted copy of Intranet post - Recording available - All-staff town hall about Robodebt Royal Commission | Full access |
| 11. | 6 July 2023 | 2 (81-82) | Redacted copy of email exchange between HR and Execs about staff support strategies post RRC Report release | Full access |
| 12. | 6 July 2023 | 3 (83-85) | Redacted copy of Intranet post - A message from the Ombudsman | Full access |
| 13. | 7 July 2023 | 1 (86) | Redacted copy of email from Brett to SLG | Full access |