



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2024/059

Rob Stewart

By email: foi+request-11092-face4977@righttoknow.org.au

Dear Mr Stewart,

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (Cth) (the FOI Act), received on 11 February 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:

- I require an unredacted copy of this document, in full;
<https://www.pmc.gov.au/sites/default/files/foi-logs/foi-2023-080-082-086.pdf>*
- Specifically, I require an unredacted copy of this document - Document 3 PDR: MS21000495, bullet point c and f.*

Request decided out of time

A decision on your request was due 12 March 2024. Unfortunately the Department was unable to complete the processing of your request by the due date. In these circumstances the Department follows the advice in the FOI Guidelines at paragraph 3.161.

As a result, review rights for your request can be direct to the Information Commissioner, information on how to submit a review is at the bottom of this letter.

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 documents relevant to your request
- the FOI Act
- the Guidelines issued by the Information Commissioner¹ (the FOI Guidelines)

Documents in scope of request

The Department has identified 10 documents that fall within the scope of your request.

These documents are set out in the Schedule of Documents at **Attachment A**.

Decision

I have decided to grant access in part, with exempt material deleted, on the basis that the documents contain information exempt under:

- section 42 – Legal professional privilege
- section 47E(d) – Agency operations
- 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. Section 42 – Legal professional privilege

Section 42(1) exempts documents that would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines note that decision makers are required to turn their mind to the common law concept of legal professional privilege,² and that to determine whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
- whether the advice given is independent

¹ section 93A of the FOI Act

² Paragraph 5.127 of the FOI Guidelines

- whether the advice given is confidential.³

In light of these factors, and having regard to the nature of the advice, I am satisfied that part of document 3 and 8 meets the common law requirements for establishing a claim of legal professional privilege.

I have decided that part of documents 3 and 8 are exempt from release under section 42 of the FOI Act.

2. Section 47E(d) – Conditional Exemption – Operations of the Agency

Section 47E(d) of the FOI Act provides (extract):

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 an agency.

Paragraphs 5.15-5.18 of the FOI Guidelines explain that the term 'reasonably be expected' means that the predicted effect needs to be reasonably expected to happen, and that the effect is identified during the decision making process.

Portions of documents 4 – 7, 9, and 10 contain internal email addresses and contact details which are not publicly available. I consider the disclosure of these internal contact details would, or could reasonably be expected to have, a substantial adverse effect on the proper and efficient conduct of the operations of the Department. Disclosure of the information could reasonably be expected to lead to significant increased volumes of unsolicited enquiries being made, which would compromise the day to day operations of the Department, as these internal contact details are not resourced to triage and respond to public enquiries and communications. I note there are established channels of communication available for members of the public to contact government agencies.

I am satisfied that portions of the documents are conditionally exempt under section 47E(d) of the FOI Act. I have considered the public interest factors at section 4.

3. Section 47F – Conditional Exemption – Personal Privacy

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

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

'Personal information' under the FOI Act has the same meaning as set out in section 6 of the *Privacy Act 1988* (Cth) and means information or an opinion about an identified individual, or an individual

³ Paragraph 5.129 of the FOI Guidelines

who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

I am satisfied the documents contain personal information in the form of email addresses, direct phone numbers, and names of individuals who are reasonably identifiable, and this amounts to personal information for the purposes of section 47F(1) of the FOI Act.

In considering whether release of the personal information is unreasonable, I note paragraph 6.138 of the FOI Guidelines which states "the test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals." The FOI Guidelines also note what is considered unreasonable requires a consideration of all the circumstances. My assessment is set out below.

Having identified staff and third party personal information within the documents, I have considered section 47F(2) of the FOI Act, which lists factors an agency must have regard to in determining whether disclosure would be unreasonable:

- a) the extent to which the information is well known*
- b) 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;*
- c) the availability of the information from publicly accessible sources*
- d) any other matters that the agency considers relevant.*

The portions of the documents found to be conditionally exempt include the personal information of individuals, including their direct contact information. In this instance, and with regard to the factors listed above, I am satisfied the information identified in the documents is not well known and is not available from public sources. Further, I have considered that harm could, or would reasonably be caused by release, impacting the individuals' right to privacy.

I am satisfied that portions of the documents are conditionally exempt under section 47F(1) of the FOI Act. I have considered the public interest factors below.

4. 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 interest.⁴ 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 section 11B(4) of the FOI Act, this includes:

⁴ section 11A(5) of the FOI Act

- a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government*
- 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 section 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 parts of the documents does not seem to have the character of public importance, rather the matter has very limited scope and may only be of interest to a narrow section of the public
- the subject matter within the conditionally exempt documents does not offer any insights into public expenditure
- I am satisfied that your personal information is not contained within the conditionally exempt documents and therefore section 11B(3)(d) is not a relevant factor to favour access

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 interest.⁷ 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.

In my view, the factors against disclosure of the conditionally exempt material is that disclosure of personal information exempt under section 47F could reasonably be expected to prejudice individuals' rights to personal privacy. I consider that this factor weighs heavily in favour of it being in the public interest not to release the material.

I also consider that disclosure of internal contact details exempt under section 47E(d) could reasonably be expected to prejudice the Department's effective operations. There are established channels of communication for members of the public to contact that Department, and I consider it is not in the public interest to disclose these operational contact details.

⁵ section 3 of the FOI Act

⁶ section 11B(3)(a) of the FOI Act

⁷ section 11B(5) of the FOI Act

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 review with the Information Commissioner.

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 this request was deemed to be refused, 12 March 2024.

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. We may be able to rectify the problem. 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



David Belgrove
Assistant Secretary
Parliamentary and Government Branch
Department of the Prime Minister and Cabinet
30 April 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>