



OFFICIAL

# Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2024/062

Trav S

By email: [foi+request-11115-ccc30a0c@righttoknow.org.au](mailto:foi+request-11115-ccc30a0c@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 15 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:

*Please refer to your department's FOI/2022/01 and Document 1, 2 and 3 released ...on 18 Feb 2022. Please provide a copy of these documents with the s22(1)(a)(ii) redactions removed.*

*We acknowledge PM&C's policy to withhold the names and contact details of public servants not in the senior executive. However, the public's rights conferred by the FOI Act sit well above PM&C's internal policy. Law trumps policy.*

The Department understands that you are referring to relates to the decision in FOI/2022/017. The Department wrote to you seeking confirmation of this; however, no response was received.

## 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 Commissioner under section 93A of the FOI Act (the Guidelines)

## Documents in scope of request

The three documents that were subject of the Department's decision in FOI/2022/017 fall within the scope of your request.

## Decision

I have decided to grant access in part, with exempt material deleted, on the basis that the documents contain 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. Section 47F - Public Interest 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 has the same meaning as set out in section 6 of the *Privacy Act 1988* and is defined as:

*... information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

- (a) *whether the information or opinion is true or not; and*
- (b) *whether the information or opinion is recorded in a material form or not.*

The documents contain the names and contact details of individuals at the Department of Defence (Defence) and this Department from 18 years ago. In considering whether the disclosure of this personal information is unreasonable<sup>1</sup>, I have taken the following into account:

- the identity of the individuals are not well known

---

<sup>1</sup> Section 47F(2)

- the individuals are not associated with the material contained in the documents
- the information is not readily available from publicly accessible sources<sup>2</sup>
- there would be no public purpose through release of this material
- the age and current relevance of the material
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act<sup>3</sup> This is particularly relevant, given your request has been made through the Right to Know website

I note the FOI Act requires consultation when it is reasonably practical to do so and that consultation with affected third parties is required before making a decision to disclose. In light of the years passed I find that it is not reasonably practicable to consult the individuals named in the documents. I also consider it would not be appropriate to disclose their personal details in the absence of their expressed consent.

On this basis, I am satisfied that releasing this information would involve the unreasonable disclosure of personal information and that this material is conditionally exempt under section 47F(1) of the FOI Act.

## 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 interest<sup>4</sup>. 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.

In applying the public interest, I have noted the objects of the FOI Act<sup>5</sup> 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:

- The disclosure of the limited amount of material that is conditional exempt under section 47F(1) would not bring further clarity to the documents in questions and not materially promote the objects of the FOI Act
- the conditionally exempt elements of the documents do not seem to have the character of public importance, being mainly limited to names and contact details of individuals who held agency positions 18 years ago, which may only be of interest to a narrow section of the public.

---

<sup>2</sup> 6.140 of the Guidelines

<sup>3</sup> 6.142-143 of the Guidelines

<sup>4</sup> section 11A(5) of the FOI Act

<sup>5</sup> section 3 of the FOI Act

- 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 parts of the 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 Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest<sup>6</sup>. The 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 disclosure of the material I have found to be the conditionally exempt could reasonably be expected to prejudice the protection of individuals' right to privacy. Such disclosure would not advance the public interest in transparency or scrutiny of government activities. I give weight to this factor against disclosure.

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 material in the documents would be contrary to the public interest and this material is exempt under section 47F of the FOI Act.

## Review rights

If you disagree with my decision, you may apply for Information Commissioner review of the decision.

### 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](#).<sup>7</sup>

## 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](#).<sup>8</sup>

---

<sup>6</sup> section 11B(5) of the FOI Act

<sup>7</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

<sup>8</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>

OFFICIAL

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Belgrove', with a horizontal line extending from the end of the signature.

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

3 April 2024

OFFICIAL