



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of David Banham, Chief Operating Officer

Applicant: Mr Jackson Gothe-Snape
Decision date: September 2015
FOI reference number: 16-02
Documents: First five emails sent or received [by staff at the Department] after 11.29am on 9 July 2015 mentioning 'South Australia' or 'South Australian'

Contents

Summary	2
Authority to make this decision	2
Background	2
Charges for providing access	3
Documents subject to this request.....	3
Decision.....	3
Reasons for decision	3
Statement of reasons	4
<i>Personal privacy (section 47F)</i>	4
Irrelevant material.....	5
Access to documents	5
Your rights of review.....	5
<i>Internal Review</i>	6
<i>Information Commissioner Review</i>	6
Contacts	6
Schedule of documents	7
Schedule of relevant provisions in the FOI Act.....	9

Summary

1. I have made a decision to release documents subject to your request in part.

Authority to make this decision

2. I, David Banham, Chief Operating Officer, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about access to documents in the possession of the Department in accordance with subsection 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 10 July 2015 you made a request for access to documents in the possession of the Department. Your request sought access to:

"...copies of emails sent or received on 9 July 2015 mentioning 'South Australia', 'South Australian', 'SA' or 'Adelaide'."

4. On 13 July 2015 the Department contacted you requesting further information about the scope of your request in order for the Department to be able to properly identify documents.

5. On the same day you advised you are seeking:

"...emails containing discussion of infrastructure related to South Australia or Adelaide discussed on 9 July 2015, can you please provide copies of emails sent or received that are identified by a text search of the Department's email records for the terms 'South Australia', 'South Australian', 'SA' and 'Adelaide', restricted to the date 9 July 2015."

6. On 21 July 2015 the Department notified you, in accordance with subsection 24(1) of the FOI Act, of its intention to refuse your request on the basis that processing it would substantially and unreasonably divert the resources of the Department (subparagraph 24AA(1)(a)(i)) of the FOI Act, and you had not provided sufficient information for the Department to be able to properly identify documents (subparagraph 24AA(1)(b) of the FOI Act).

7. On the same day you reduced the scope of your request to:

"...the first five emails sent or received after 11.29am on 9 July 2015 mentioning 'South Australia' or 'South Australian'."

To clarify, the search is for the phrases indicated by quotation marks and does not include emails containing 'South' or 'Australia' but not 'South Australia', or 'South' or 'Australian' but not 'South Australian'."

8. On 23 July 2015 you advised that you are seeking:

"emails sent or received by staff at the Department of Infrastructure, not 'emails relating to infrastructure'."

You further advised to consider your request to be for:

"The first five emails sent or received after 11.29am on 9 July 2015 mentioning 'South Australia' or 'South Australian', noting that the search is for the phrases indicated by quotation marks and does

not include emails containing 'South' or 'Australia' but not 'South Australia', or 'South' or 'Australian' but not 'South Australian'.

Charges for providing access

9. On 30 July 2015 the Department provided you with an estimate of a charge in the amount of \$23.30.
10. On 5 August 2015 the Department processed your cheque payment in the amount of \$23.30.
11. As a decision has now been made, charges have been reassessed based on the actual cost of processing your request, as required by Regulation 10(1) of the Freedom of Information (Charges) Regulations 1982. The final charge is \$23.30. As this amount has already been paid by you in full, there are no further charges to be paid.

Documents subject to this request

12. The Department has undertaken a search of its records and has identified five documents that fall within the scope of your request. Documents are listed in the schedule of documents at schedule 1.
13. During the processing of your request we consulted the Department of the Prime Minister and Cabinet on the release of one of the documents.

Decision

14. I have made a decision to release the documents relevant to your request in part. The documents that I have chosen to grant access to in part and those which I have decided to refuse access to are set out in schedule 1, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with subsection 22(2) of the FOI Act.

Reasons for decision

15. In accordance with subparagraph 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to the documents follows.
16. I have taken the following material into account in making my decision:
 - the content of the documents that fall within the scope of your request.
 - sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth.
 - the following provisions of the FOI Act relevant to my decision:

section 11B	public interest exemption – factors
section 22	access to edited copies with exempt or irrelevant material deleted
section 47F	personal privacy
 - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).
17. A full extract of all FOI Act provisions used to make my decision are provided in schedule 2.

Statement of reasons

18. I have decided to grant partial access to documents within the scope of your request, subject to the following exemption in accordance with the FOI Act:

Conditional Exemptions

19. Where a document is assessed as conditionally exempt, the agency or minister must give access to it unless in the circumstances access would, on balance, be contrary to the public interest (subsection 11A(5) of the FOI Act). The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

Personal privacy (section 47F)

20. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).
21. Documents 1 and 2 relate to Comcare investigations and include attachments relating to the investigations. The emails and attachments contain personal information, including names, addresses and health assessments of individuals. This information is sensitive personal information (as defined by the *Privacy Act 1988*) and is not public knowledge.
22. Document 5 contains the personal name and email address of a member of the public, following an enquiry made to the Department. This individual is not known to be associated with the information.
23. I see no public purpose in disclosing the personal information contained within these documents and consider it a breach of personal privacy to do so. I do not consider it appropriate to disclose personal information where it is not otherwise available and in particular when it relates to the personal health of individuals. If this information were disclosed there is a reasonable expectation that it could be subject to misuse, contrary to the wishes of the individuals.
24. Accordingly, I have decided that documents 1 and 2 meet the criteria for conditional exemption in full. I have decided that document 5 meets the criteria for conditional exemption in part. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with subsection 11A(5) of the FOI Act.

Application of the public interest test:

25. Subsection 11A(5) of the FOI Act provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.
26. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
- (a) disclosure would promote the objects of the FOI Act;
 - (b) disclosure would inform debate on a matter of public importance;
 - (c) disclosure would promote effective oversight of public expenditure; and
 - (d) disclosure would allow a person to access his or her personal information.

27. I do not consider that disclosure of the documents would promote the objects of the FOI Act nor would it inform debate on a matter of public importance or provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.
28. I also considered the following factor which does not favour disclosure:
- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.
29. As set out in subsection 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (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; or
 - (d) access to the document could result in confusion or unnecessary debate.
30. I am satisfied that no irrelevant factor has been considered, as set out in subsection 11B(4) of the FOI Act.
31. It is my view that the protection of personal privacy is a key consideration in this matter. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Irrelevant material

32. Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, subsection 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions. Where this section applies, section 11A of the FOI Act provides that access to the edited copy is required to be given. Accordingly, the documents which are listed as containing irrelevant material, in accordance with this provision in Schedule 1, have been modified by deletions (to remove irrelevant material).
33. In this case I consider irrelevant material to be names of departmental employees below Senior Executive Service (SES) level.

Access to documents

34. The documents released to you in accordance with the FOI Act are enclosed.

Your rights of review

35. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

36. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure and Regional Development
GPO Box 594, Canberra ACT 2601
Fax: (02) 6275 1347
Email: <FOI@infrastructure.gov.au>

Information Commissioner Review

37. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
38. You can ask the OAIC to review the Department's decision. You do not need to seek an internal review from the Department before seeking a review from the OAIC. However, going through the Department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
39. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
40. You must apply in writing and you can lodge your application in one of the following ways:

Online: <www.oaic.gov.au>
Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Email: <enquiries@oaic.gov.au>
In person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>.

Contacts

41. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.



David Banham
Chief Operating Officer
11 September 2015



Australian Government

Department of Infrastructure and Regional Development

Schedule of documents

Applicant: Mr Jackson Gothe-Snape

Decision date: September 2015

FOI reference number: 16-02

Documents: First five emails sent or received [by staff at the Department] after 11.29am on 9 July 2015 mentioning 'South Australia' or 'South Australian'

Document reference	Author	Recipient	Document description	Decision	Exemption provision
1	Department of Infrastructure and Regional Development	Comcare	Email and attachments relating to Comcare case	Exempt in full	section 47F (personal privacy)
2	Department of Infrastructure and Regional Development	Comcare	Email and attachments relating to Comcare case	Exempt in full	section 47F (personal privacy)
3	Department of Infrastructure and Regional Development	State and Territory jurisdictions	Email: invitation emails to state and territory jurisdictions	Release in part (<i>irrelevant material removed – subsection 22(1)(a)(ii)</i>)	N/A

4	Department of the Prime Minister and Cabinet	Department of Infrastructure and Regional Development	Email: Aerodrome inspection round		Release in part (irrelevant material removed – subsection 22(1)(a)(ii))	N/A
5	Department of Infrastructure and Regional Development	Member of public	Email: Road safety responsibilities		Release in part (irrelevant material removed – subsection 22(1)(a)(ii))	section 47F (personal privacy)



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;

- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document 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.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of

authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
(see section 11A).

Public interest conditional exemptions

47F Public interest conditional exemptions—personal privacy

General rule

- (1) 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).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
- (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 or Minister considers relevant.

- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:
- qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:
- (a) a medical practitioner;
 - (b) a psychiatrist;
 - (c) a psychologist;
 - (d) a counsellor;
 - (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).