

GPO Box 4889, Sydney NSW 2001



Australian Government
Australian Taxation Office

Evelyn Doyle

By email:

[foi+request-1178-](mailto:foi+request-1178-8e301daa@righttoknow.org.au)

[8e301daa@righttoknow.org.au](mailto:foi+request-1178-8e301daa@righttoknow.org.au)

Contact officer:

Phone:

Client ID:

Reference Number:

M McCafferty

02 9374 2457

1-761075L

2 October 2014

Dear Ms Doyle

Decision regarding your Freedom of Information request

I refer to your request for documents under the *Freedom of Information Act 1982* (FOI Act), which was dated 22 August 2015.

Decision

I am an officer authorised under section 23 of the *FOI Act* to make decisions regarding access to documents.

I have decided to grant access to the documents requested in part. The attached schedule sets out the documents considered relevant to your request and indicates where they have been released in full or edited in accordance with section 22 of the FOI Act to provide an edited copy of the document that may be released.

The reasons for my decision are set out in the attached statement of reasons.

Your rights of review

If you are unhappy with my decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted.

A request for an internal review needs to:

- be in writing
- be sent to us within 30 days of being notified of my decision, and
- be sent, quoting reference number 1-761075L, via:
 - email at FOI@ato.gov.au, or
 - mail to:
Australian Taxation Office
GPO Box 4889
Sydney NSW 2001

The internal review will be done by an officer who did not make the initial decision.

A request for an independent review by the Australian Information Commissioner needs to:

- be sent within 60 days of being notified of my decision
- include a copy of this notice
- include an address where notices can be sent (eg your email address), and
- be sent to:

GPO Box 5218

Sydney NSW 2001

Or enquiries@oaic.gov.au

You may also apply to the Information Commissioner if you have not been informed of the outcome of an internal review within 30 days.

For more information about how the OAIC will handle FOI matters please see www.oaic.gov.au.

Complaints

Any complaint about the processing of your FOI request can be directed to the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, in person or by using an online form available from their website.

- 1300 362 072 (Cost of a local call)
- ombudsman@ombudsman.gov.au
- GPO Box 442
Canberra ACT 2601
- www.ombudsman.gov.au/pages/making-a-complaint/

For more information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Mary McCafferty on extension 42457.


Yours sincerely



M McCafferty

Senior Lawyer, General Counsel, ATOC

Australian Taxation Office
P 02 93742457

 We're reinventing

Reasons for Decision

Application Details

Applicant: Evelyn Doyle

Contact: foi+request-1178-8e301daa@righttoknow.org.au

Our ref: 1-5VER6OA

Timeline

The ATO received your request on 22 August 2015. Section 15(5) of the FOI Act requires agencies to take all reasonable steps to notify FOI applicants of a decision on their request within 30 days of its receipt. The initial 30 days for processing your request was therefore due to expire on 21 September 2015.

On 17 September 2015, you agreed to an extension of time of 14 days for the processing of your request, in accordance with section 15AA of the FOI Act, extending the processing period for your request to 5 October 2015.

Scope of Request

You have requested access to the following categories of documents:

1. Briefings, talking points and policy documents (draft or otherwise) related to proposed government measures to address multi-national profit shifting since January 2015; and
2. Correspondence written to the ATO or the Minister in 2015 from any corporation in response to the government's announcement to address multi-national profit shifting; and
3. Briefings or other documents that outline the evidence around fears of kidnapping leading to the government's decision to wind back tax disclosure laws for about 700 different companies (as described in a Sydney Morning Herald article of April 10, 2015).

On 11 September 2015, by email we advised you that the first category of documents in your request was likely to capture a large number of documents. On 15 September 2015, I understand you had a discussion with Mr Wilson-Otto of the ATO. It was noted that the second category of documents would be limited to those held by the ATO and I understand that you identified the type of documents you seek.

On 23 September 2015, Mr Wilson-Otto advised you that 3 documents would be likely to contain the information you seek, those documents being:

- 'Presentation to OECD: Australian Budget 2015-16 — Multinational integrity measures (Talking points, undated).
- 'Announcements in relation to G20/OECD Base Erosion and Profit Shifting (BEPS) recommendations' (Briefing, 12 May 2015)
- 'Combating multinational tax avoidance (several measures)' (Briefing, 12 May 2015)

On 23 September 2015, you revised the scope of your FOI request to limit the first category of documents to the three documents noted above.

Documents Considered

In reaching my decision I relied on the following documentary evidence

- The terms of your FOI request dated 22 August 2015
- A briefing by another officer in relation to his discussions with you
- The contents of the relevant documents themselves
- Advice as to the searches conducted by the relevant ATO business line, provided through the ATO Information Law Network.
- The FOI Act
- The guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act

Searches

Officers in two areas of the ATO were asked to undertake searches of any relevant ATO systems, collate all documents falling within the scope of your request and to produce copies to ATO General Counsel. As outlined above, a large number of documents were identified in relation to the first category of your request, which was ultimately refined down to three specific documents. Both areas have advised that their searches did not identify any documents falling within the second and third categories of your request.

My Decision

I have decided to grant access to the documents requested in part. Some documents have been edited to remove information that I consider to be exempt under sections 33, 47C and 47F of the FOI Act. As provided for by s. 22(1) of the FOI Act, I have granted you access to edited copies of those documents with the exempt material deleted.

The attached schedule sets out my decision in relation to each document that has been identified as relevant to the request.

Reasons for Decision

Section 33 — Documents affecting international relations

Section 33 exempts a document if disclosure would, or could reasonably be expected to cause damage to the international relations of the Commonwealth. I have applied section 33 to delete one paragraph from page one of the 'Announcements in relation to G20/OECD Base Erosion and Profit Shifting (BEPS) recommendations' briefing, which contains information about Australian's position in treaty negotiations.

I am satisfied that the release of information about Australia's position in relation to certain aspects of treaty negotiations may compromise future negotiations in that area. As such, I have formed the view that the relevant paragraph is exempt from disclosure under section 33 of the FOI Act.

Section 47C — deliberative processes

Section 47C conditionally exempts a document if it includes 'deliberative matter'. I have applied section 47C to delete one paragraph from page two of the 'Combating multinational tax avoidance (several measures)' briefing which contains details from a taxpayer consultation process.

Deliberative matter

Deliberative matter is content that is in the nature of, or relating to an opinion, advice or recommendation that has been obtained, prepared or recorded, or a consultation or deliberation that has taken place in the course of, or for the purposes of, a deliberative process of an agency or minister.

I am satisfied that the deleted paragraph is deliberative material in that it relates to a consultation that has taken place in the course of a deliberative process of an agency.

Public interest

Conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

I have considered the following factors in favour of disclosure:

- a. providing access to information held by a Commonwealth agency, which is a national resource managed for public purposes
- b. promoting the objects of the FOI Act, including increasing scrutiny and review of government activities, and facilitating public access to information generally.
- c. revealing the reasons for government decision-making, and any background or contextual information that informed the decision

- d. allowing or assisting inquiries into possible deficiencies in the conduct or administration of an agency or official.

I have considered the following factors against disclosure:

- a. The relevant paragraph includes the ATO's commentary on views expressed through a consultation process, which is of limited utility to the public debate as it is inaccurate and out of date
- b. The paragraph relates to legislative matters and expresses a view that is not held by the ATO. If released it could be read as the ATO inappropriately offering commentary.

Having considered the matters outlined above, I have formed the view that the disclosure of the information would have little or no public benefit, while there is a potential adverse effect for the public debate and appropriate resolution of issues at a national level. I consider that in the circumstances, disclosure would on balance be contrary to the public interest. Accordingly, I have decided that relevant paragraph is exempt under section 47C of the FOI Act.

Section 47F – documents affecting personal privacy.

Section 47F conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person. I have applied section 47F in to delete mobile phone numbers of 2 ATO officers.

Personal Information

Personal information is defined in section 4 of the FOI Act as:

Information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

I am satisfied that in the circumstances the mobile phone numbers are personal information as defined in section 4 of the FOI Act.

Disclosure unreasonable

Personal information may be exempt under section 47F of the FOI Act if disclosure would be 'unreasonable'. There are a number of factors in deciding whether or not disclosure would be unreasonable, including:

- a. the nature of the information, i.e. it should not be bland or common place
- b. the circumstances in which the information was obtained
- c. the current relevance of the information
- d. the stated object of the legislation in section 3 of the FOI Act being to facilitate and promote the disclosure of information
- e. the extent to which the person is a public figure
- f. the extent to which the information is already a matter of public knowledge
- g. whether there was any expectation of confidentiality
- h. whether the information would shed light on the workings of government

I am satisfied that the mobile phone numbers are not well known or publically available. Further, I do not consider that the disclosure of the mobile phone numbers would shed light on the workings of the ATO or enhance accountability or transparency. Finally, I do not consider that the mobile phone numbers are of any relevance or importance to the current request, particularly considering the documents also contain landline numbers for the relevant ATO officers.

On this basis, I find that the disclosure of the mobile telephone numbers would involve unreasonable disclosure of personal information, and are therefore conditionally exempt from disclosure under section 47F. Nonetheless, I must give access to the numbers unless doing so would be contrary to the public interest.

Public interest

Conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

I have considered the factors in favour of disclosure outlined in the discussion of section 47C of the FOI Act, above. Factors a and b are particularly relevant here.

I have considered the following factors against disclosure:

- a. Staff mobile phone numbers have little value to the applicant, particularly considering that the documents contain landline telephone numbers for the staff concerned other than to allow after hours access.

Having considered the matters outlined above, I have formed the view that the disclosure of the information would have little or no public benefit. The factors against such disclosure include the assurance of work health and safety measures. Accordingly, I consider that in the circumstances, disclosure would on balance be contrary to the public interest. Accordingly, I have decided that two mobile phone numbers are exempt under section 47F of the FOI Act.

Schedule of Documents

Document Number	Folios	Document type	Document name	Status	Exemptions claimed	Comments
1	1	Briefing	Announcements in relation to G20/OECD Base Erosion and Profit Shifting (BEPS) recommendations	Exempt in part	Section 33 Section 47F	Information relating to treaty negotiations has been redacted from folio 1 ATO officers' mobile phone numbers have been redacted from folio 1
2	2 to 3	Briefing	Combating multinational tax avoidance (several measures)	Exempt in part	Section 47C Section 47F	Deliberative matter has been redacted from folio 3 ATO officers' mobile phone numbers have been redacted from folio 2
3	4 to 5	Notes	Presentation to OECD: Australian Budget 2015-16 — Multinational integrity measures	Release in full		