



Australian Government



Australian  
**Charities** and  
Not-for-profits  
Commission

01 October 2015

Our ref: FOI 2015Q1R2

Ms Patricia Lincoln

Sent by email: [foi+request-1204-2743264c@righttoknow.org.au](mailto:foi+request-1204-2743264c@righttoknow.org.au)

Dear Ms Lincoln,

**Freedom of information – Notice of Decision – Request no 2015Q1R2**

1. The purpose of this letter is to give you a decision about access to information that you requested under the *Freedom of Information Act 1982* (**FOI Act**).
2. I am authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Australian Charities and Not-for-Profits Commission (**ACNC**).

**Scope of request**

3. On 01 September 2015 you requested access to:

*"... the names of the Committee Members of White Ridge Rescue, Inc ..."*

**Decision on access**

4. I identified one document which falls within the scope of your request. I did this by asking the Registration team to assist me in identifying a document that named the committee members of the charity. The document is a screen shot taken from our registrations system.
5. I have decided to refuse you access to this document.
6. Upon review of the document, I have found that the names are conditionally exempt from release pursuant to s 47E(d) of the FOI Act, and that the balance of the document is irrelevant because the information falls outside the scope of your request.
7. I have taken the following material into account in making my decision:
  - the terms of your FOI request;
  - the content of the document requested;
  - the relevant provisions of the FOI Act, in particular sections 3, 11A, 11B, 22 and 47E(d));
  - the relevant provisions of the *Australian Charities and Not-for-profits Commission Act 2012* (**ACNC Act**), in particular Division 150;
  - the *Australian Charities and Not-for-profits Commission Bill 2012 Revised Explanatory Memorandum*, in particular paragraph 11.3; and





- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**) to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act, in particular Parts 5 and 6.

### Reasons for decision

8. Sub-section 47E(d) of the FOI Act provides that a document is conditionally exempt if:

*"... its disclosure would, or could reasonably be expected to, ... have a substantial and adverse effect on the proper and efficient conduct of the operations of the agency."*

9. In order to properly and efficiently carry out many of its functions under the ACNC Act, the ACNC relies on charities to provide it with information of a confidential and personal nature. For example, a charity must provide extensive information to enable to ACNC to make an assessment of the charity's entitlement to be registered under the ACNC Act.

10. If the ACNC is unable to assure charities that information provided to the ACNC will be treated confidentially, it may impede the flow of information required by the ACNC to effectively administer the ACNC Act.

11. Relevantly, paragraph 11.3 of the *Australian Charities and Not-for-profits Commission Bill 2012 Revised Explanatory Memorandum* notes that:

*"... Engagement with and the trust of the not-for-profit (NFP) sector could be at risk if responsible entities and registered entities do not have confidence that their information is being handled appropriately, which would, in turn obstruct the ACNC in undertaking its powers and functions under the Bill ..."*

12. As such, the ACNC secrecy provisions impose 'strict obligations on ACNC officers' (Division 150 of the ACNC Act) to ensure that information collected by the ACNC for the purposes of administering the ACNC Act remains confidential, unless certain limited exceptions apply.

13. Section 150-25 of the ACNC Act makes it an offence for an ACNC officer to release 'protected ACNC information' which is defined as information that:

- was disclosed or obtained under or for the purposes of the ACNC Act; and
- relates to the affairs of an entity; and
- identifies, or is reasonably capable of being used to identify, the entity.

14. The information you seek clearly falls within this definition of 'protected ACNC information', and no exemption applies that would allow the release of this information about third parties to you. As such, the release of the names to you would constitute a breach of the ACNC secrecy provisions.

15. It would severely undermine the ACNC's ability to comply with its obligations to administer the ACNC Act in accordance with the requirements of that Act, if information protected by the ACNC secrecy provisions were to be released under the FOI Act.





16. Placing the ACNC in direct conflict with its obligations under the ACNC Act (specifically the secrecy provisions), and by potentially interrupting the supply of information required to effectively administer that Act, would clearly have a substantial and adverse effect on the proper and efficient conduct of the operations of the ACNC.
17. Accordingly, I find that the names of the charity committee members are conditionally exempt from release under s 47E(d) of the FOI Act.
18. I must now consider, in accordance with s 11A(5) of the FOI Act, if providing you access to the information at this time would, on balance, be contrary to the public interest.
19. Sub-section 11B(3) of the FOI Act lists four factors that favour access when applying the public interest test. The only factor relevant to your request is that allowing access to the information would promote the objects of the FOI Act by recognising that information held by the Government is a national resource managed for public purposes.
20. At paragraph 6.25, the Guidelines provide a non-exhaustive list of further factors that favour access. Noting the concerns you raised about the charity in your 01 September 2015 email, the only factor that may potentially be relevant is that disclosure may:
  - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.
21. The Guidelines also contain a non-exhaustive list of factors against disclosure (at paragraph 6.29). The following of which I find to be relevant:
  - disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
  - disclosure could reasonably be expected to impede the flow of information to the ACNC;
  - disclosure could reasonably be expected to prejudice the ACNC's ability to obtain confidential information;
  - disclosure could reasonably be expected to prejudice the ACNC's ability to obtain similar information in the future; and
  - disclosure could reasonably be expected to harm the interests of an individual or group of individuals.
22. In addition to these factors against disclosure, I find the following factors are also relevant:
  - the public ought to be able to provide confidential information to a government agency and be assured that the information will be treated confidentially and in a manner consistent with the reason for providing the information; and
  - through the publication of certain charity information on the ACNC public register, the ACNC Act has specifically addressed the need to strike a balance between providing information about charities to the public in order to maintain,





protect and enhance public trust and confidence in the charity sector, with protecting the interest of charities in having their information kept confidential.

23. In balancing these factors, I am satisfied that disclosure of the names of the committee members to you at this time would be contrary to the public interest. In particular, I consider that the legitimate interests of the charitable sector in keeping their information confidential would be unfairly and unreasonably prejudiced if disclosure of this information were to be made under the FOI Act.
24. I have not taken into account any of the irrelevant factors listed in sub-section 11B(4) of the FOI Act.
25. Section 22 of the FOI Act allows for the deletion of exempt and irrelevant information, where reasonably practicable, so as to provide access to the remainder of the document.
26. As I have found that the names are not in the public interest to release, and that the balance of the document is irrelevant to your request, I am unable to release an edited version of the document to you.

#### **Review Rights**

27. In accordance with section 26(1)(c) of the FOI Act, a statement setting out your rights of review under the FOI Act is attached.

If you wish to discuss this decision, please contact me on the details below.

Yours sincerely

**Regina Rutten**

Legal Counsel | Australian Charities and Not-for-profits Commission

T (03) 928 51739 | F 1300 232 569 | E [regina.rutten@acnc.gov.au](mailto:regina.rutten@acnc.gov.au) | W [www.acnc.gov.au](http://www.acnc.gov.au)



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## Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### Internal review

Under section 54 of the FOI Act, you may apply in writing to the ACNC for an internal review of my decision in one of the following ways:

by email: [advice@acnc.gov.au](mailto:advice@acnc.gov.au)  
by post: Freedom of Information Contact Officer  
ACNC  
GPO Box 9990, Melbourne VIC 3001

The internal review application must be made within 30 days of the date of this letter. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days after your application being received. Please quote our reference number **FOI 2015Q1R2** when lodging your request.

### 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 Australian Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

*Please note: The Australian Government has introduced a Bill into Parliament to abolish the Australian Information Commissioner. For more information about how the Australian Information Commissioner is currently handling FOI matters, please see [www.oaic.gov.au](http://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 (calls from mobile phones at mobile phone rates)
- [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)
- GPO Box 442, Canberra ACT 2601
- [www.ombudsman.gov.au/pages/making-a-complaint/](http://www.ombudsman.gov.au/pages/making-a-complaint/)

For further details regarding the Commonwealth Ombudsman, please visit: [www.ombudsman.gov.au](http://www.ombudsman.gov.au).