



FOI15/216; 15/15688

14 January 2016

Mr Geordie Guy

By email: foi+request-1344-05d1f287@righttoknow.org.au

Dear Mr Guy,

Freedom of Information Request FOI 15/216

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Anna Harmer, Assistant Secretary, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 3 November 2015 you requested access to documents relating to the *Telecommunications (Interception and Access) Act 1979*. Specifically you sought access to:

“any correspondence with the department in which a body or agency not authorised under 176A of the Telecommunications (Interception and Access) Act to access telecommunications metadata, requests such authorisation either by seeking to be declared an enforcement agency under the act, or seeks authorisation external to 176A(3)”

On 16 November 2015, you were issued with a notice of the Department's intention to refuse your request, due to a practical refusal under section 24AA of the FOI Act. On 17 November 2015 you responded to this notice, advising you wished to modify the scope of your request to be for any document which lists the names of each agency falling within the scope of your request.

On 20 November 2015, you were advised that the Department would process the request on the basis of the modified scope, which was stated to be as follows:

“any document which lists the names of each agency which is not authorised to access telecommunications metadata under 176A of the Telecommunications (Interception and Access) Act, which has requested such authorisation either by seeking to be declared an enforcement agency under the act, or seeking authorisation external to 176A(3)”

On 20 November 2015, you were issued with a notice of estimated charges.

On 2 December 2015, you were advised of a 30 day extension for third party consultations, making the decision for your request due on 15 January 2016.

I identified two (2) documents that fall within the scope of your request. I did this by arranging for a comprehensive search of the department's electronic document management system and making inquiries of staff likely to be able to identify relevant documents.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

With regard to the documents you requested (set out in the schedule attached), I have decided to grant access to edited versions of both documents. More information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents identified in the attached schedule, I have decided to:

- **grant access in part** to documents 1 and 2 with irrelevant matter deleted under section 22 (*Deletion of irrelevant material*), and
- **grant access in part** to documents 1 and 2 with exempt matter deleted under section 47B (*Public interest conditional exemption – Commonwealth-State relations*) as providing access would be contrary to the public interest.

Material taken into account

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
- the FOI Act (specifically sections 22, and 47B)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act
- the views of third parties consulted by the Attorney-General's Department under section 26A, and
- the views of Commonwealth agencies consulted by the Attorney-General's Department.

The schedule indicates each document to which access is refused. My reasons for refusing access are given below.

Deletion of exempt or irrelevant matter (section 22)

Section 22 of the FOI Act provides that:

- (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...*
- (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.*

I have edited all information in documents 1 and 2 considered to be outside of the scope of your request under section 22(1)(a)(ii) of the FOI Act (deletion of exempt or irrelevant matter).

Public interest conditional exemptions – Commonwealth-State relations (section 47B)

Section 47B of the FOI Act provides that:

A document is conditionally exempt if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or*
- (b) *would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth ...*

Documents 1 and 2 contain the names of four State or Territory agencies, disclosure of which would, or could reasonably be expected to, cause damage to relations between the Commonwealth and the relevant State or Territory.

The information was communicated to the Commonwealth Attorney-General's Department by State or Territory government authorities on a confidential basis, where there were existing implied or assumed arrangements concerning the exchange of information between the department and the relevant agency. In light of this, agencies objected to disclosure on the basis that it would compromise the trust they place in the Commonwealth. Disclosure of this information in these circumstances would reasonably be expected to damage the relationship between these agencies and the department.

Following consultation with the relevant agencies, I am satisfied that documents 1 and 2 contain information conditionally exempt under section 47B. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of public interest factors follows.

Public interest considerations

Section 11B of the FOI Act lists the public interest factors favouring access. Of these factors, I consider that two are relevant to your request: promoting the objects of the FOI Act, and informing debate on a matter of public importance.

Though the FOI Act does not list any specific factors weighing against disclosure, I consider it relevant that disclosure would damage the working relationships between the Commonwealth and the relevant State or Territory agencies.

Disclosure of information in these documents would be contrary to the public interest as a strong relationship between the department and State and Territory law enforcement and regulatory agencies is essential for the department to develop effective policies and programs relevant to the Attorney-General's portfolio. During consultation these four agencies indicated that disclosure of this information would damage the relationship between the department and the relevant agencies, and could affect any future cooperation with the department.

I am satisfied that the factors against disclosure outweigh the factors in favour and that disclosure of the documents would be contrary to the public interest.

Outstanding charges

We advised you that the estimated charge for processing your request was \$424.08. You agreed to that charge and we received your deposit of \$106.02 on 1 December 2015.

The actual amount for processing was calculated to be \$478.17. This makes the final charge higher than the estimated charge, however the higher amount can only be charged if the department decides to give you access to all documents without deletions. As you are only being granted access in part to both documents, the higher amount cannot be charged.

Following payment of the outstanding charge of \$318.06, the Attorney-General's Department will provide you with the documents to which I have decided to grant access via email.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We 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 Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Privacy Section
Office of Corporate Counsel,
Attorney-General's Department,
3-5 National Circuit
Barton, ACT 2600

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.

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 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
post: GPO Box 2999, Canberra ACT 2601
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 <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please contact Siobhan, FOI case manager, by telephone on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely



Anna Harmer
Assistant Secretary

Attachments

- A. *Schedule of documents*
- B. *Invoice*