



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2015/227

FREEDOM OF INFORMATION ACT 1982

APPLICANT: Daniel Nolan
Right to Know

DECISION BY: Leon Donovan
Regional Manager
Eastern New South Wales

FOI request

In an email dated 19 November 2015, the applicant made a request to the Department of the Prime Minister and Cabinet (Department) under the *Freedom of Information Act 1982* (FOI Act), for: "...all correspondence digital or physical between PMC and Transport for NSW or Sydney Trains or the NSW state transit authority since Malcolm Turnbull became Prime Minister".

The Department advised the applicant on 20 January 2016 that it had identified State-originated information relevant to the request and that in the circumstances it considered it appropriate to consult with that third party. The effect of this was to extend the decision due date to 17 February 2016.

The Department consulted with the relevant State and received a response from them on 10 February 2016 indicating no concerns with the proposed release of the relevant documents.

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.

Searches for relevant documents

The Infrastructure, Agriculture and Regional Development Branch (IARDB) in the Department initially consulted with other relevant Branches in the Department, including in the Indigenous Affairs Group (IAG) that would hold or be able to establish the existence of any document relevant to the applicant's request. Having regard to the terms of the applicant's FOI request, IARDB made enquiries with officers responsible for relevant matters in all relevant Branches. Searches of the Department's records identified 13 documents falling within the scope of the request within the Department's possession. As all of these documents were held in the IAG, it was agreed the decision on the request be made by a decision maker in IAG and was transferred accordingly.

Material taken into account

I have taken the following material into account in making my decision:

- the content of the 13 documents that fall within the scope of the request (identified as Documents 1 to 13);
- the FOI Act (including, in particular, sections 22, 47F and 47G);
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines); and
- the views of the consulted State party consulted by the Department under section 26A of the FOI Act.

Decision

I have decided to grant access to Documents 1 to 13 in part. My decision on access is set out in the schedule at Attachment A. My reasons for decision are set out below. Extracts of the relevant sections of the FOI Act referred to in my decision are at Attachment B.

Reasons for decision

I have made my decision based on my findings that only parts of Documents 1 to 13 are conditionally exempt under sections 47F and/or 47G of the FOI Act.

Section 47F – public interest conditional exemption – personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would result in the unreasonable disclosure of personal information.

The definition of personal information in section 4 of the FOI Act has the same meaning as in section 6 of the *Privacy Act 1988*, i.e. "...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."

Subsection 11A(5) of the FOI Act provides that an agency must give access to such a document unless (in the circumstances) access to it at that time would, on balance, be contrary to the public interest.

For this exemption to apply to those parts of Documents 1 to 13, as noted on the documents and in the schedule, I need to be satisfied that: firstly, these parts of the documents contain personal information; secondly, that disclosure would be unreasonable; and thirdly, that disclosure at this time would, on balance, be contrary to the public interest.

(i) Personal information

Parts of Documents 1 to 13 contain personal information (being the names and/or contact details of certain individuals other than the applicant, and also the signatures of certain individuals in Documents 10 and 12 who are not the applicant, and, in the case of Documents 3-10 and 12, other material that contains information that would enable private individuals to be identified). These parts have all of the necessary elements for them to be regarded as including personal information as the content:

- identifies people;
- provides information about the individuals; and
- relates to natural persons.

I am satisfied that the information is personal information and satisfies the first element of the section 47F conditional exemption provision in the FOI Act.

(ii) Unreasonable disclosure

I have considered the following factors to see if disclosure of these parts of the documents would be unreasonable:

- the extent to which the information is known;
- whether the information is available from a publicly accessible source; and
- any other information the Department considers relevant.

I am satisfied the personal information contained in these documents is not well known. I am also satisfied the personal information is not readily available from publicly accessible sources. Having regard to these matters, I consider it would be unreasonable to disclose the relevant items of personal information of the individual persons contained in Documents 1 to 13. Accordingly, those parts of Documents 1 to 13 that contain this personal information are conditionally exempt under section 47F of the FOI Act.

(iii) Public Interest

Subsection 11A(5) of the FOI Act provides that an agency must give access to a conditionally exempt document unless (in the circumstances) access to it at that time would, on balance, be contrary to the public interest.

In determining whether disclosing the conditionally exempt parts of the documents would, on balance, be contrary to the public interest, I have not taken into account any irrelevant factors identified in subsection 11B(4) of the FOI Act.

I have considered the public interest factors favouring disclosure identified in subsection 11B(3) and have had regard to the FOI Guidelines.

Subsection 11B(3) of the FOI Act sets out the following factors in favour of disclosure:

- promoting the objects of the FOI Act;
- informing debate on a matter of public importance;
- promoting effective oversight of public expenditure; and
- allowing a person to access his or her own personal information.

I am of the view that disclosure of these parts of Documents 1 to 13 would not inform any debate on a matter of public importance or promote effective oversight of public expenditure, nor would disclosure enhance government decision-making or allow any person access to their own personal information.

The factors indicating that disclosure would **not** be in the public interest include:

- a reasonable expectation of prejudice to the protection of an individual's right to privacy; and
- the effect on an individual of disclosure of the individual's personal information.

I am satisfied the personal information contained in the documents (being the names and/or contact details of certain individuals other than the applicant, and also the signatures of certain individuals in Documents 10 and 12 who are not the applicant, and, in the case of Documents 3-10 and 12, other material that contains information that would enable private individuals to be identified) is not well known and that it is not readily available from publicly accessible

sources. I am also satisfied that disclosing the personal information would prejudice the protection of an individual's right to privacy.

I consider that the factors against disclosure set out above outweigh any factors in favour of disclosure. Therefore, I consider that disclosure of the relevant parts of Documents 1 to 13, as noted on the documents and in the schedule, would, on balance, be contrary to the public interest. Accordingly, I am satisfied that those parts of Documents 1 to 13, as noted on the documents and in the schedule, are exempt under subsection 47F(1) of the FOI Act.

Section 47G Public interest conditional exemptions—business

Section 47G of the FOI Act provides that a document is conditionally exempt if it discloses information (business information) concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information:

- would, or could reasonably be expected to, unreasonably affect the person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs (paragraph 47G(1)(a)), or
- could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purposes of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency (paragraph 47G(1)(b)).

Do the documents contain information about the business or professional affairs of a person, or the business, commercial or financial affairs of an organisation or undertaking?

The FOI Guidelines state that the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs.¹ The FOI Guidelines further state that:

- the term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs';² and
- the term 'profession' is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.³

Documents 3 and 9 contain information about a particular organisation that receives funding for certain activities and details of the nature of these funded activities. I am satisfied that this material can be characterised as business affairs information about an organisation.

Would there be an unreasonable adverse effect from disclosure?

I am satisfied that releasing this material in these documents would have an unreasonable adverse effect on the business affairs of this organisation. It provides information in relation to a funding proposal in relation to which the organisation was identified as being a key stakeholder that may not be well known and that may affect its competitive position if this information were to be released.

¹ FOI Guidelines, paragraph [6.169].

² Ibid.

³ FOI Guidelines, paragraph [6.170].

I am of the view that the material identifying the organisation as being a key stakeholder in relation to a programme for the receipt of funding from the Australian Government is conditionally exempt under section 47G of the FOI Act, as noted on Documents 3 and 9 and in the schedule, as disclosure of this material could have an unreasonable adverse effect on the organisation's business affairs.

Would disclosure of the business information be contrary to the public interest?

Subsection 11A(5) of the FOI Act provides that an agency must give 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.

In working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest, section 11B(3) of the FOI Act sets out four factors favouring access which must be considered if relevant.⁴ They are that disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure;
- allow a person to access his or her personal information.

I have not had regard to any of the irrelevant factors listed in section 11B(4) of the FOI Act.

Paragraph 6.29 of the FOI Guidelines provides a non-exhaustive list the public interest factors against the release of the business information of an organisation. These include material that could reasonably be expected to harm the interests of an individual or groups of individuals.

Taking into account these factors, I consider that, on balance, the public interest does not lie in favour of disclosure of the business information contained in Documents 3 and 9, and that disclosure could negatively affect the relevant organisation's ability to carry out its functions.

I acknowledge that there is a public interest in promoting the objects of the FOI Act and in oversight of government expenditure and decision-making. I am of the view that the information being released to the applicant will provide a sufficient amount of detail regarding the relevant funded activity without causing a substantial negative impact on the organisation's ability to carry out its business activities.

Accordingly, I am satisfied that those parts of Documents 3 and 9, as noted on the documents and in the schedule, are exempt under paragraph 47G(1)(a) of the FOI Act. I have therefore decided not to disclose this information to the applicant.

Section 22 – irrelevant information

Under section 22 of the FOI Act, the Department is permitted to delete information containing exempt material or that would otherwise disclose information that would reasonably be regarded as irrelevant to the request.

Accordingly, irrelevant material and material that is exempt under sections 47F and 47G of the FOI Act has been removed from Documents 1 to 13 under section 22 of the FOI Act where indicated on the documents and noted in the schedule.

⁴ FOI Guidelines, paragraph [6.23].

Publication of documents – FOI disclosure log

Please note that the Department is required under section 11C of the FOI Act to publish a disclosure log on its website. The disclosure log lists information that has been released in response to an FOI access request. The publication of such documents must be done within 10 working days of the applicant being given access to the documents. However, the disclosure log requirement does not apply to the following:

- personal information about any person if publication of that information would be 'unreasonable';
- information about the business, commercial, financial or professional affairs of any person if publication of that information would be 'unreasonable';
- other information covered by a determination made by the Australian Information Commissioner if publication of that information would be 'unreasonable';
- any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above dot points.

I have decided to publish Documents 1 to 13 on the Department's FOI disclosure log.

The Department's disclosure log is accessible at:

(http://www.dpmc.gov.au/foi/ips/disclosure_logs/dpmc/2013-14.cfm)


Further information regarding the disclosure log can be obtained from the Office of the Australian Information Commissioner's website at:

http://www.oaic.gov.au/publications/fact_sheets/FOI_fact_sheet14_DisclosureLogs.rtf

Review rights

Information about the applicant's rights of review and complaint are provided together with this decision.

Should the applicant have any inquiries about this decision, he should contact the Department by telephone on (02) 6271 5849 or by email at FOI@pmc.gov.au.

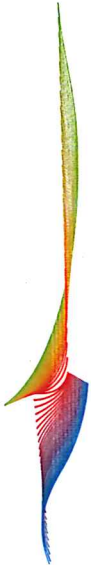


Leon Donovan
Regional Manager
Eastern New South Wales

6 April 2016

FOI REQUEST: FOI/2015/227
SCHEDULE OF DOCUMENTS

ATTACHMENT A



FOI

| Document | Date | Description | No. of pages | Proposed exemptions |
|----------|------------------|---|--------------|---|
| 1. | 13 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 2 | Release in part - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 2. | 13 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 2 | Release in part - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 3. | 11 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 4 | Release in part - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - information relating to the business affairs of a person or organisation exempted under s47G of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 4. | 10 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 2 | Release in part - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 5. | 9 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 4 | Release in part - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 6. | 9 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 5 | Release in part - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |

FOI REQUEST: FOI/2015/227
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ATTACHMENT A

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|-----|-------------------|--|----|--|
| 7. | 9 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 3 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 8. | 6 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 3 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 9. | 6 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW (2 pages) plus attachment (1 page) | 3 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - information relating to the business affairs of a person or organisation exempted under s47G of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 10. | 2 November 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 3 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 11. | 26 October 2015 | Meeting request | 1 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 12. | 12 October 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW (1 page), plus attachments (9 pages) | 10 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |
| 13. | 15 September 2015 | Email exchange between Department of Prime Minister and Cabinet and Transport for NSW | 2 | <ul style="list-style-type: none"> Release in part <ul style="list-style-type: none"> - information relating to the personal privacy of persons exempted under section 47F of the FOI Act - irrelevant material deleted under section 22 of the FOI Act. |

Extracts of relevant provisions of the FOI Act

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.

Decision to give access

- (3) If, after such consultation has taken place, the agency or Minister decides to give the applicant access to the document, the agency or Minister must give written notice of the decision to both of the following:
 - (a) the State;
 - (b) the applicant.

Access not to be given until review or appeal opportunities have run out

- (4) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the State for review or appeal in relation to the decision to give access to the document have run out, the decision still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have *run out*, see subsection 4(1).

Edited copies and State-originated information

- (5) This section applies:
 - (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
 - (b) in relation to a document containing State-originated information—to the extent to which the document contains such information.

Definition

- (6) In this section:

State includes Norfolk Island.

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).

47G Public interest conditional exemptions—business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see FOI fact sheet 13 – *Freedom of information: How to make a complaint*.

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

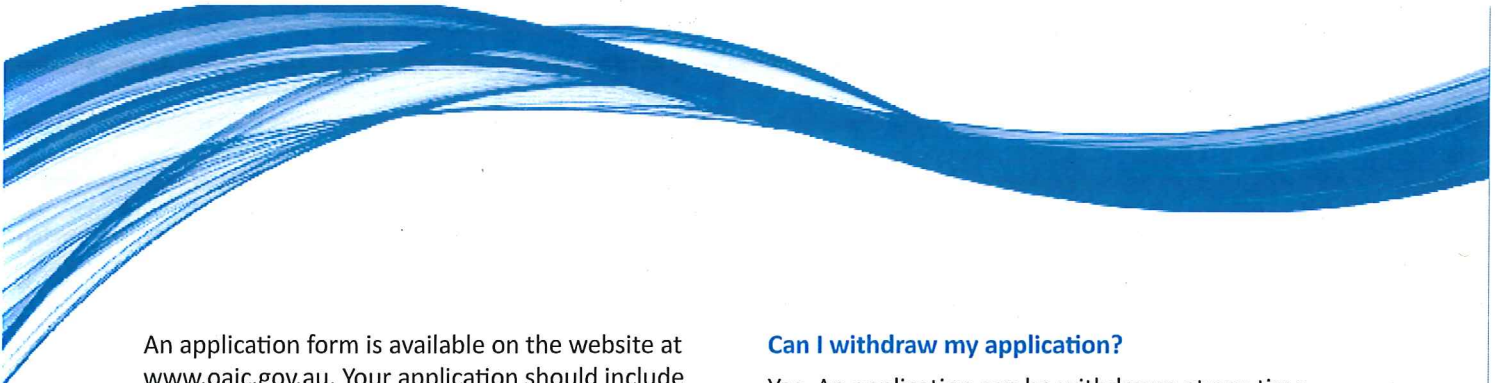
Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
fax: +61 2 9284 9666
email: enquiries@oaic.gov.au
in person: Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.



What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 2999, Canberra ACT 2601
or visit our website at www.oaic.gov.au

Complaint rights

The applicant may make a complaint to the Information Commissioner or the Commonwealth Ombudsman about the Department's actions in relation to this decision. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision.

Please note: From 1 November 2014 the Information Commissioner will refer all FOI complaints to the Commonwealth Ombudsman.

A complaint to the Information Commissioner must be in writing and identify the agency in respect of which the complaint is made. The Office of the Australian Information Commissioner (OAIC) may be contacted by phone (1300 363 992), email (enquiries@oaic.gov.au) or by letter (GPO Box 2999, Canberra ACT 2601). Further information about the OAIC can be found on their website: <https://www.oaic.gov.au/>

A complaint to the Commonwealth Ombudsman may be made orally or in writing. You may make a complaint to the Office of the Commonwealth Ombudsman by phone (1300 362 072), by letter (GPO Box 442 Canberra ACT 2601), by fax (02 6276 0123), in person or through their online complaint form. Further information about the Commonwealth Ombudsman can be found on their website: <http://www.ombudsman.gov.au/>.