



# Australian Government

## Civil Aviation Safety Authority

Legal Services Division

TRIM Ref: F15/8322

14 January 2016

Mr Rob Cumming

By email: [foi+request-1423-9a7e742c@righttoknow.org.au](mailto:foi+request-1423-9a7e742c@righttoknow.org.au)

Dear Mr Cumming,

### **ACCESS TO DOCUMENTS UNDER THE *FREEDOM OF INFORMATION ACT***

I refer to your email dated 9 December 2015 seeking access to documents under the *Freedom of Information Act 1982* (Cth) (the Act). You sought access documents related to statements made by Peter Gibson or other CASA officers, following the death of Richard Green, his wife and friend in the Hunter Valley on 7 November 2015 released to The Australian, Newcastle Herald and Sydney Morning Herald, including e-mails to the newspaper outlets, internal e-mails of approval for release and transcripts of any verbal communications to those organisations.

On 16 December 2015, I made a decision to impose charges in the amount of \$44.88 in relation to your application. On 23 December 2015, payment was received.

I am the decision maker for your request. I have identified 16 pages of documents relevant to your request. These documents are further detailed in the attached Schedule of documents.

### **Conditional exemption - personal information**

Section 47F of the Act provides that a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person.

Documents 3 to 6 (inclusive) contain personal information, specifically mobile numbers. This information is not in the public domain.

I consider this is information which is conditionally exempt under s.47F of the Act, on the grounds that any disclosure of it would involve the unreasonable disclosure of personal information.

I consider that the release of this information would be an unreasonable disclosure of personal information, as it would intrude on the right to privacy of the individuals concerned. This information is not available from publicly accessible sources.

### **The Public Interest**

Even though I have decided that the part of the documents are conditionally exempt under s.47F, I am also required to consider whether disclosing it would on balance be contrary to the public interest. If I am not satisfied of that, access must be given.

Section 31B of the Act provides that a document is exempt if it is conditionally exempt under Division 3, and access to the document would also, on balance, be contrary to the public interest for the purposes of s.11A(5) of the Act.

In applying this test, I have weighed the factors in favour of disclosure against those against it.

I have identified the following factor for disclosure:

- it would promote the objects of the Act, as described in s.3.

I have identified the following factors against disclosure:

- it could reasonably be expected to prejudice the protection of an individual's right to privacy.

In weighing the public interest factors for the purposes of this exemption, I have determined that the granting of access to the individuals' information would not further the objects of the Act, nor could access to this information be characterised as a matter of public importance telling in favour of disclosure.

On the other hand, disclosure of this kind of information would intrude on the right to privacy of the individuals concerned.

On balance, I consider that the public interest favours the protection of this personal information. I consider it would be contrary to the public interest to release this personal information to you.

I am satisfied that disclosure of this personal information would be contrary to the public interest, and you will not be given access to parts of the above mentioned documents containing this information.

### **Exemption - legal professional privilege**

Section 42 of the Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Relevantly, the privilege protects confidential communications between a client and his or her lawyer that are made for the purposes of seeking or being provided with legal advice.

The communications to or from a CASA legal officer, referenced in the Schedule as documents 1 and 2 would be privileged from production in legal proceedings on the ground of legal professional privilege. The emails seek legal advice and comment and provide such advice and comment. Accordingly, I have made a decision that these emails (or parts thereof) are exempt documents.

### **Documents released**

I have decided to give you access to the documents, with the exempt material deleted in accordance with s.22 of the Act.

The documents which I have decided to release to you, subject to appropriate redactions, are enclosed with this letter.

**Application for internal review of decision**

Section 54 of the Act gives you the right to apply for an internal review of my decision. An application for internal review of my decision must be made in writing within 30 days of receipt of this letter.

No particular form is required, but it is desirable to set out in the application the grounds on which you consider that the decision should be reviewed. An application for review should be addressed to Freedom of Information at the address below:

Freedom of Information  
Legal Services Division  
Civil Aviation Safety Authority  
GPO Box 2005, Canberra ACT 2601

**Review by the Australian Information Commissioner**

Alternatively, under section 54L of the 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: <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

Please do not hesitate to contact me on (02) 6217 1445 if you have any questions in relation to your request.

Yours sincerely,



Jennifer Smith-Roberts  
Freedom of Information and Finance Officer  
Legal Services Division

### Schedule of documents

No.	Date of document	Description of document	Decision
1	10/11/15 3.03pm, 12.04pm, 12.00pm, 11.50am, 11.29am, 10.53am,	Email chain between CASA officers and CASA Legal Officer	Part exempt – s 42
2	10/11/15 12.03pm, (including emails in item 1 above – 10/11/15 12.00pm, 11.50am, 11.29am and 10.53am	Email chain between CASA officers and CASA Legal Officer	Part exempt – s 42
3	10/11/15 12.45pm, 12.35pm	Email chain between CASA and Australia Associated Press	Part exempt – s 47F
4	10/11/15 12.24pm, 11.04am	Email chain between CASA and Seven Network	Part exempt – s 47F
5	10/11/15 12.23pm, 10.55am	Email chain between CASA and Nine Network	Part exempt – s 47F
6	10/11/15 12.22pm, 10.43am	Email chain between CASA and Seven Network	Part exempt – s 47F
7	10/11/15 12.21pm	Email from CASA to The Australian	Release