



Mr Patrick Conheady
By email: foi+request-1457-6f855d50@righttoknow.org.au

Our reference: 1-7N10Z46
Contact officer: Katy Zhu
Phone: (03) 8632 5064
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Decision regarding your Freedom of Information request

Dear Mr Conheady

Re: Your freedom of information request

I refer to your request dated 27 December 2015 under the *Freedom of Information Act* 1982 (the FOI Act).

Your FOI request was initially sent to the Inspector General of Taxation (IGT) for processing. In that request, you sought access to 'emails or other communications wherein data was provided by the ATO for use in your [IGT's] 2014 report 'Review into the Australian Taxation Office's administration of penalties,' as well as emails or other communications in which you requested that data from the ATO.' In particular, you sought access to documents relevant to tables 3, 5-11 and 15-32 of the tables in the IGT's 2014 Review into the ATO's administration of penalties.

On 7 January 2016, your FOI request was transferred in full to the Australian Taxation Office (ATO) on the basis that the subject matter of the documents were more closely related to the functions of the ATO.

Following subsequent telephone conversations, on 1 February 2016, you agreed to narrow the scope of your request to 'summary/aggregate statistics and data the ATO provided to the IGT along with corresponding emails sent from the ATO to the IGT for the purposes of the IGT's 2014 review of the ATO's administration', and in particular, with respect to the aforementioned tables.

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

Decision

I have located 29 documents, which fall within the scope of your request, and I have decided to:

- Release in part 6 documents
- Release in full 24 documents

The 6 documents that are released in part were edited pursuant to section 38 and section 22(1)(a)(ii) of the FOI Act.

I have attached a *Schedule of Documents* outlining my decision on the documents.

In reaching my decision I relied on the following documentary evidence

- the FOI Act,
- the contents of the documents requested,
- information provided by the officer searching for documents, and
- the guidelines published by the Office of the Australian Information Commissioner.

Section 38 – Secrecy – No relevant exemptions

Section 38 of the FOI Act provides that a document is exempt if its disclosure (or information contained therein) is prohibited under a provision of an enactment that is specified in Schedule 3.

For the purposes of section 38 of the FOI Act, Schedule 3 of that Act specifies section 355-25 in Schedule 1 of the *Taxation Administration Act 1953* (**the TAA**).

Section 355-25 in Schedule 1 states:

355-25 Offence – disclosure of protected information by taxation officers

(1) *An entity commits an offence if:*

(a) *the entity is or was a taxation officer; and*

(b) *the entity:*

...

(ii) *discloses information to another entity (other than the entity to whom the information relates or an entity covered by subsection (2)) or to a court or tribunal; and*

(c) *the information is protected information; and*

(d) *the information was acquired by the first-mentioned entity as a taxation officer.*

Section 355-30 of the TAA provides a broad definition of the term 'protected information', and means information that:

- was disclosed or obtained under or for the purposes of a law that was a taxation law (other than the *Tax Agent Services Act 2009*) when the information was disclosed or obtained; and
- relates to the affairs of an entity; and
- identifies, or is reasonably capable of being used to identify, the entity.

'Taxation officer' is also defined under section 355-30 of the TAA, and means a Commissioner or a Second Commissioner of Taxation, or an individual appointed or engaged under the PS Act and performing duties in the ATO.

Subdivision 355-B in Schedule 1 of the TAA provides for a number of exceptions to the prohibition on disclosure of protected information is prohibited, for example:

- if the information was already publicly available (section 355-45);
- disclosure is made by an ATO officer in performing their duties (section 355-50), including where the disclosure is made to an entity for the purposes of enabling the entity to understand or comply with its obligations under a taxation law.¹

The 3 documents relevantly identified in the Schedule contain information relating to identified or identifiable third party entities which was obtained by ATO officers for purposes relating to the administration of taxation laws.

¹ See item 6 in the table under section 355-50(2) in Schedule 1 of the TAA. This exception is commonly referred to as the 'performance of duties' exception.

I do not consider that any of the exceptions to disclosure in subdivision 355-B of Schedule 1 of the TAA apply. I am satisfied that this information is 'protected information' as defined under section 355-30 of the TAA, the disclosure of which is prohibited under section 355-25.

Accordingly, I find that the relevant documents identified in the Schedule contain material which is exempt under section 38 of the FOI Act.

Section 22(1)(a)(ii) - material irrelevant to the request

Section 22(1)(a)(ii) allows me to delete irrelevant material from a document which is only partially relevant to an applicant's FOI request. I find that 3 documents relevant to your request contain information about the internal operations or governance of the ATO that are not within the scope of the FOI request, and are thus irrelevant to your FOI request. I have deleted that material accordingly.

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 **1-7N10Z46** via:

- email at foi@ato.gov.au or
- mail to:
Freedom of Information
Australian Taxation Office
GPO Box 1797
MELBOURNE VIC 3001

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 2999
Canberra City
ACT 2601

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

Visit the Australian Information Commissioner website, www.oaic.gov.au/freedom-of-information/foi-reviews, for more information about Information Commissioner review.

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
- PO Box 442 Canberra ACT 2601
- www.ombudsman.gov.au/pages/making-a-complaint/

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katy Zhu', with a long horizontal stroke extending to the right.

Katy Zhu
Lawyer
General Counsel