



Australian Government

Comcare

9 May 2016

Our reference: FOI 2016/3820

Mr James Smith

By email: foi+request-1848-c3d640bc@righttoknow.org.au

Dear Mr Smith

Your request for information – FOI 2016/3820

I refer to your email of 18 April 2016 seeking access under *Freedom of Information Act 1982* (FOI Act) to:

- *'Current social media policy of the department, which covers departmental use and/or private use by employees in an individual capacity.'*
- *'Any current guidance material which is available for employees to make informed decisions about their private social media use.'*

On 21 April 2016, I released under administrative access a link to Comcare's social media policy on our website. In this email I asked if this information satisfied your request.

In an email dated 30 April 2016, received by FOI on 2 May 2016, you replied, asking FOI:

- *'if any information exists which is relevant to personal use of social media by Comcare employees?'*

Authority

I am authorised under section 23 of the FOI Act to make decisions on access requests and this notice sets out the decision on your request.

Searches undertaken

Comcare conducted thorough searches of its systems and I am satisfied that the documents relevant to your request have been identified.

Documents

Please find attached to the email by which this notice has been sent, the documents relevant to your request. The documents are:

1. Technology Common Use Policy - version 1.1 dated 20 November 2013
2. News item for Comcare's internal staff, 'Privacy settings on social media' dated 26 February 2016

For completeness, I have released Comcare's full Technology Common Use Policy rather than just the social media section (15.2). Our searches did not identify any other documents as being relevant to your request.

Summary of Decision

The decision is to release both these documents with redactions made to personal information that may reasonably be used to identify other people. That information is exempt from disclosure under section 47F of the FOI Act.

The legislative background and the reasons for applying the exemption are detailed in the decision record at [Attachment A](#) to this notice.

Timeframe for processing your request

The statutory timeframe for processing an FOI request is 30 days from the date the valid request is received by an agency. Comcare has taken 2 May 2016 (the date on which your email was received by Comcare) in which you amended the scope of your request as the new valid date. Therefore the due date for a decision on your request is 1 June 2016.

Charges

On this occasion, Comcare has not applied charges for processing your request.

Review rights

Should you not be satisfied with this decision, there are avenues of review available to you. Please refer to [Attachment A](#) for information concerning your review rights.

Contact

Should you wish to discuss any aspect of this notice, please feel welcome to contact me preferably by email to foi@comcare.gov.au, or on telephone 1300 366 979.

Yours sincerely

Kaytlin Patrick
Freedom of Information

Attachments

- A. Decision Record
- B. Review Rights
- C. Technology Common Use Policy v1.1
- D. News item – Privacy settings on social media



DECISION RECORD

INFORMATION ON WHICH THE FINDINGS ARE BASED

The information on which the findings of material questions of fact are based:

- a) your request, received by Comcare on 2 May 2016
- b) the information identified as being within the scope of the request
- c) the Guidelines issued by the Australian Information Commissioner
- d) discussions with internal staff, and
- e) the FOI Act.

RELEVANT LEGISLATION

Section 15 – Requests for access


You have exercised your right under section 15 of the FOI Act to request access to documents. Section 15 relevantly provides:

(1) A person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Section 3 and Section 3A – Objects of the FOI Act

Sections 3 and 3A of the FOI Act concern the objects of the Act and state the reasons for giving the Australian community access to information held by government.

I have had regard to these objects when making this decision. In summary, the objects of the FOI Act are:

- a) to give the Australian community access to information held by government*
 - b) to promote Australia's representative democracy by increasing public participation in government processes*
 - c) to promote Australia's representative democracy by increasing scrutiny, discussion, comment and review of government activities*
 - d) to increase recognition that information held by government is to be managed for public purposes and is a national resource*
 - e) to ensure that powers and functions in the FOI Act are performed and exercised, as far as possible, so as to facilitate and promote public access to information, promptly and at the lowest reasonable cost.*
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Section 47F – documents affecting personal privacy

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information

Personal information is defined in section 4 of the FOI Act and is the same as the definition in the *Privacy Act 1988*:

personal information means 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.

The elements of 'personal information' are:

- i. it relates to a natural person (not, for example, a company)
- ii. it says something about the individual
- iii. it may be in the form of an opinion, it may be true or untrue, and it may form part of a database
- iv. the individual's identity is known or is reasonably ascertainable using the information in the document.

The information includes third parties' names and direct contact numbers. I am satisfied that each of the documents over which an exemption under section 47F is claimed contains third parties' personal information.

Disclosure unreasonable

If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires that I take into account:

- i. the extent to which the information is well known
- ii. 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
- iii. the availability of the information from publicly available sources, and
- iv. any other matter I consider relevant.

I am satisfied from the nature of the information that the information in question is neither well-known nor publicly available. I have considered the circumstances in which the information

was recorded, and the reasonable expectation of confidentiality that would have been held by the third parties who are the subjects of the information.

On the basis of the above considerations, I have concluded that disclosure of third parties' personal information would be unreasonable.

The public interest

Conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act). As the Information Commissioner's Guidelines state at paragraphs 6.8 – 6.9:

The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision-maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

I have considered the factors favouring access and factors that are irrelevant, in sub-sections 11B(3) and (4) of the FOI Act. In balancing the public interest in this case, I have considered the following factors for and against disclosure:

Factors in favour of disclosure

- *promoting the objects of the FOI Act*
- *facilitating access to information to members of the public*

Factors against disclosure

- *could reasonably be expected to breach the personal privacy of individual third parties*
- *protecting individuals from unreasonable interferences with their privacy*

I acknowledge that there is a public interest in documents of Comcare being made available to the public for the purpose of encouraging public debate and to promote oversight of Comcare's activities. I do not consider that disclosure of the personal information of third parties would facilitate any of these objects.

In this case, I have formed the view that the disclosure of the personal information would make a negligible contribution to those factors in favour of disclosure. There is no, or minimal, public interest in this information being known. By contrast, the interference with an individual's privacy is, in my view, significant and I have concluded that disclosure would, on balance, be contrary to the public interest.

Taking into account the above matters, I consider that disclosure of third parties' personal information is, on balance, contrary to the public interest. Accordingly, I have determined that third parties' personal information is exempt under section 47F of the FOI Act.

Freedom of Information

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REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you. Firstly, under section 54 of the FOI Act, you may apply for an internal review of the decision by Comcare. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access

An internal review will be conducted by a person other than the original decision-maker. No particular form is required to apply for review. An application for a review of the decision can be addressed or emailed to:

Freedom of Information
Comcare
GPO Box 9905
CANBERRA ACT 2601

Email: foi@comcare.gov.au

If you choose to seek an internal review, you will still have a right to apply to the Office of the Australian Information Commissioner (OAIC) for a review of Comcare's internal review decision.

Review by the Australian Information Commissioner

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner (IC) without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The IC is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the OAIC website: www.oaic.gov.au.

You can contact the IC to request a review of a decision in writing or via email:

OAIC
GPO Box 5218
Sydney NSW 2001

Email: enquiries@oaic.gov.au

Complaints to the Commonwealth Ombudsman

You may complain to the Commonwealth Ombudsman about any action taken by Comcare in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)

Email: ombudsman@ombudsman.gov.au

There is no particular form required to make a complaint to the Ombudsman. The request should be in writing, set out the grounds for investigation and identify Comcare as the relevant agency.

