



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2016/135

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: William Summers
Right to Know

DECISION BY: Gerard Martin
Assistant Secretary
Ceremonial and Hospitality Branch

FOI request

In an email dated 26 July 2016 to the Department of the Prime Minister and Cabinet ('the Department'), the applicant made a request under the *Freedom of Information Act 1982* (FOI Act) for:

a copy of all letters the Prime Minister and Cabinet has received from the following members of the royal family and heirs to the throne since 1 January 2014:

- 1) *The Queen*
- 2) *Prince Charles*
- 3) *Prince William*

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Secretary under section 23 of the FOI Act.

Searches

I arranged for searches of the Department's electronic and other records to be undertaken and made inquiries with officers who had knowledge of the subject matter and would be likely to be able to locate documents within the scope of the request.

As a result of these searches I have identified three documents that fall within the scope of the request.

Decision

I have decided to refuse access to all three documents under section 33 of the FOI Act (documents affecting national security, defence or international relations). My reasons for decision are set out below.

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 the request
- the FOI Act (specifically section 33)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

Reasons for decision

Section 33 - Documents affecting national security, defence or international relations

Section 33 of the FOI Act provides:

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

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth;

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

In paragraph 5.25 the FOI Guidelines explain that

'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments.

Paragraph 5.30 of the FOI Guidelines explains that the phrase 'international relations' means the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic level or ministerial level but also covers relations between government agencies.

At paragraph 5.32 the FOI Guidelines acknowledge the possibility that disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in the future.

In such circumstances the actual content of the document would be less important than the fact that it was communicated in an expectation of confidentiality between authorities or representatives of another country and Australia. There would be reasonable expectation that authorities or representatives of countries other than those directly involved would also suffer a loss of confidence in Australia as a reliable recipient of confidential information on becoming aware that such documents had been made public.

Documents 1 – 3 contain material communicated in confidence from members of the British Royal Family to Australia's Prime Minister. While they have a significant connection with Australia, the correspondents are also dignitaries of the United Kingdom. The letters they sent

to the Prime Minister were written, sent and received in the expectation of confidentiality. I am satisfied that disclosing those documents could reasonably be expected to cause damage to the international relations of the Commonwealth by diminishing the confidence of authorities, agencies and representatives of other countries that Australia is a reliable recipient of confidential communications.

Accordingly, I have decided to refuse access to all three documents in accordance with section 33 of the FOI Act.

Review rights

Information about the applicant's rights of review is attached to this decision.

Complaint rights

The applicant may make a complaint to the Information Commissioner 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. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/foi-complaints>.

Processing and access charges

I have decided not to impose processing charges in respect of the applicant's request.

If the applicant has any queries in relation to the decision he may contact the Department by email at FOI@pmc.gov.au or by telephone on (02) 6271 5849.



Gerard Martin
Assistant Secretary
Ceremonial and Hospitality Branch

21 September 2016



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.

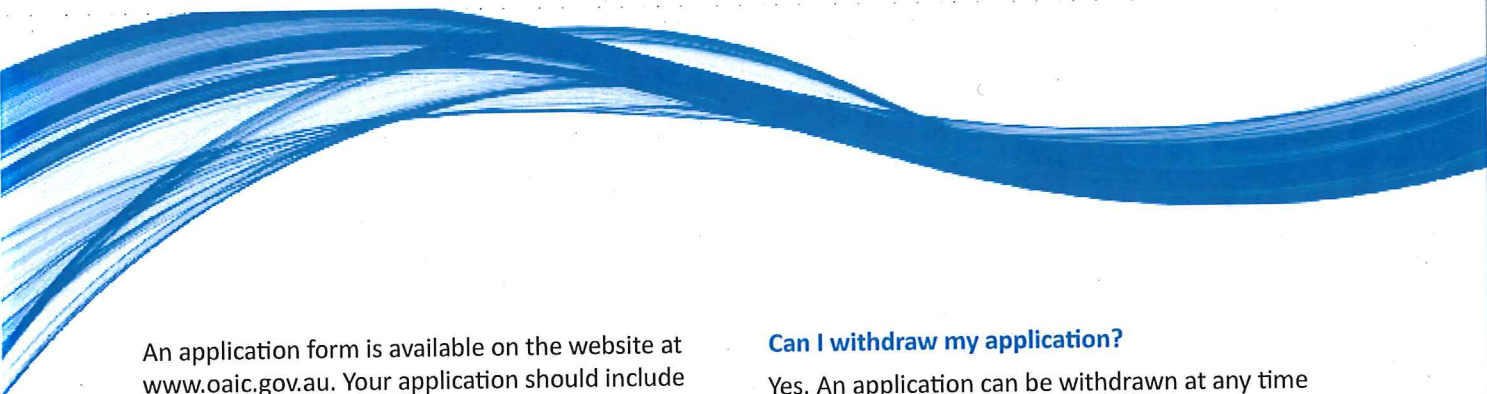
Do I have to pay?

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