



Australian Government

Department of Communications and the Arts

Mr Oliver Smith

(By email: foi+request-2163-f7e8dae1@righttoknow.org.au)

Re: Freedom of Information Request No. 03-1617

I refer to your request to the Department of Communications and the Arts for access under the *Freedom of Information Act 1982* (FOI Act) to:

- “ 1. *people on the new auDA CEO recruitment sub-committee ...*
2. *people which voted, abstained or otherwise in the appointment of the new auDA CEO, Cameron Boardman ...*
3. *any prior relationships between the auDA board members and the new auDA CEO, Cameron Boardman..”*

Authority

I am authorised by the Secretary of the Department, under section 23 of the FOI Act to make a decision in relation to this request.

Access Decision

The Department has identified one document as being within the scope of your request. I have decided to release that document to you in part, with exempt information excluded under sections 47F and 47G of the FOI Act.

I provide this statement of the reasons for my decision in compliance with section 26 of the FOI Act.

Material considered

The material on which my decision is based includes:

- your request and the documents within the scope of the request;
- the FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for my decision

The reasons for my decision are set out below.

Section 47F Exemption – Personal privacy

I have decided that some information within the document is conditionally exempt under section **47F(1)** of the FOI Act, which provides that:

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).

The conditionally exempt information, which relates to the history and conditions of employment of individuals, falls within the scope of the definition of 'personal information' in the FOI Act. In my view, releasing this material would involve the unreasonable disclosure of those individuals' personal information. In reaching this decision, I have taken into account the factors set out in subsection 47F(2) of the FOI Act, which requires me to have regard to:

- (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; and
- (d) any other matters that the agency or minister considers relevant.

With regard to consideration (a) and (c), the personal information is neither well known nor publicly available. With regard to consideration (b), the persons to whom the information relates are known to be associated with the matters in the documents but in a general sense only. With regard to consideration (d), I note that disclosure would not shed light on the workings of the government and that information released under FOI is not subject to any confidentiality conditions.

Section 11A of the Act requires that access to conditionally exempt material must be provided unless that access would, on balance, be contrary to the public interest. The FOI Guidelines provide a set of public interest factors favouring disclosure and factors against disclosure in such circumstances. In this particular case, the public interest factors in favour of disclosure include promoting the objects of the FOI Act, including the right of the public to access Government-held documents.

On the other hand, disclosure could reasonably be expected to prejudice the protection of individuals' right to privacy. Further, the public disclosure of the material in question could have a substantial adverse impact on the Department's ability to perform its functions by undermining the confidence of individuals that the Department would appropriately handle sensitive personal information. This may prejudice their willingness to provide information to the Department in the future.

Weighing up all factors, I have concluded that the release of the relevant material would on balance be both unreasonable and contrary to the public interest. The document is, therefore, partly exempt, having regard to sections 47F and 11(A)(5) of the FOI Act.

Section 47G Exemption - Business

I have also decided that some information within the document is conditionally exempt under section 47G of the Act which states that:

- (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:*
 - (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.*

The information relating to conditions of employment clearly concerns a person in respect of their professional affairs. It is my view that disclosure of such material would, or could reasonably be

expected to prejudice the future supply of information to the Department for the purpose of the administration of matters administered by the Department. The material in question was communicated to the Department in confidence, pursuant to the Department's function and status as an observer on the .au Domain Administration Board. It is information which the organisation could reasonably expect would not be used for other purposes or disclosed to third parties. In making my decision, I have had regard to the fact that the material has not been released in the publicly available document published on the .au Domain Administration website.

On this occasion, I find that the public interest factors in favour of disclosure are outweighed by those against disclosure, for the reasons outlined above in the context of section 47F.

Your review rights

Internal review

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of my access decision. Your request in writing within 30 days of the date of this letter should be directed to:

The FOI Coordinator
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601
Email: foi@communications.gov.au

Australian Information Commissioner

Under the provisions of section 54L of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my access decision. You may also make a complaint to the Australian Information Commissioner under section 70 on the Department's performance of its functions or the exercise of power under the FOI Act.

Your request for review or complaint should be directed to:

GPO Box 5218
Sydney NSW 2001
Telephone: 1300 363 992
Fax: (02) 9284 9666
Email: enquiries@oaic.gov.au

Information Publication Scheme

In accordance with section 11C of the FOI Act, where the Department gives access to a document under section 11A of the FOI Act, the Department must publish that information on its website within 10 working days. Please see www.oaic.gov.au for more information about the Information Publication Scheme.

Yours sincerely



Stuart Kerr
Legal Director
Office of the General Counsel
28 September 2016

