



Our reference: FOIREQ16/00046

Dear Ms Pane,

Outcome of your Freedom of Information request

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Background

On 25 October 2016, you made the following request through the www.righttoknow.org.au website:

In the ABS' written responses to Questions on Notice for Senate Inquiry into the 2016 Census, the ABS stated "A wide range of government agencies were consulted during the development and implementation of the 2016 Census including but not limited to the Office of the Australian Information Commissioner".

I request copy of those records held by the OAIC that relate to those consultations that the ABS said it had with the OAIC, particularly in relation to the linkages of Census collected information to other external data collections of PI. Given the privacy issues fallout relating to the considerably expanded scope of how the ABS intends to use Census data to leverage other PI held by other bodies, which is not related to the primary purposes of collection of that data, there is a considerable and significant public interest factor.

I request that the OAIC provide a schedule of all documents falling within the scope of this FOI request, as part of the FOI decision, as strongly recommended in the OAIC's FOI Guidelines to agencies.

On 1 November 2016, the OAIC acknowledged your request and confirmed that the decision is due to be provided to you by 24 November 2016.

On 23 November 2016, the OAIC wrote to you to:

- confirm the scope of your request and
- seek your agreement to extend the processing time under s 15AA of the FOI Act, due to consultations with the Australian Bureau of Statistics that do not fall within the consultation provisions of ss 26A, 27 and 27A which extend the processing time.

On the same day, you advised that you agreed to exclude duplicate copies of the documents, and direct email addresses and telephone numbers of officers from the scope of your request. You advised that you did not agree to an extension of time.

My decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have identified 45 documents falling within the scope of your request. I have decided to give you access to all 45 documents in part (the documents). In making my decision, I have relied on the exemption of certain persons and bodies provision (s 7) and the certain operations of agencies exemption (s 47E(d)) of the FOI Act.

The documents will be edited under s 22 of the FOI Act to delete exempt material and material irrelevant to your request. The edited copy, along with a detailed schedule will be sent to you within 7 days from this decision.

I have set out my reasons for this decision below.

Reasons for decision

Provision of an edited copy of exempt document with exempt and irrelevant material deleted – section 22

Section 22 of the FOI Act provides that where an agency decides that it is possible for the agency to prepare an edited copy of a document, modified by deletions to remove exempt and irrelevant material, and it is reasonably practicable to do so, the agency must prepare the edited copy and give the applicant access to the edited copy.

As I have discussed above, I have decided to prepare and give you access to an edited copy of each of the 45 documents that are within the scope of your request with exempt and irrelevant material deleted.

Exemption of certain persons and bodies – section 7

Section 7 of the FOI Act provides that bodies specified in Division 1 of Part 1 of Schedule 2 of the FOI Act are not prescribed authorities for the purposes of the FOI Act. The definition of 'agency' in s 4 includes a 'prescribed authority' and the definition of 'exempt document' in s 4 includes a document in respect of which, by virtue of s 7, an agency is exempt from the operation of the FOI Act.

The documents include summary of information from an intelligence agency. That agency is specified in Division 1 of Part 1 of Schedule 2. Therefore, by operation of ss 7 and 22, information from the intelligence agency is exempt material that will be edited from the documents.

Conditional exemption – certain operations of agencies

The FOI Act contains a number of exemptions known as 'conditional exemptions'. If a document falls within a conditional exemption, the OAIC must give you access to the document unless doing so at this time would, on balance, be contrary to the public interest (s 11A(5)).

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The documents contain some material that identifies and describes ABS IT infrastructure and security protocols.

If information relating to ABS IT infrastructure and protocols were to enter the public domain, it could reasonably be expected that this information would be sought out by computer hackers, or other individuals with a malicious intent who could reasonably be expected to use such information in attempts at circumventing ABS computer security. Given the events of census night, I am satisfied that the threats posed by such individuals is real and that if the security protocols were released attempts at cyber intrusion would be likely to occur.

For this reason, I am satisfied that disclosing material relating to the ABS's IT infrastructure and security protocols would have a substantial adverse effect on the proper and efficient conduct of the operations of the ABS, and that the relevant documents are conditionally exempt under section 47E(d) of the FOI Act.

The public interest test

In finding that the documents contains conditionally exempt material, I am therefore required to consider whether it would be contrary to the public interest to give you access to a conditionally exempt document at this time (s 11A(5)).

Section 11A(5) provides that the OAIC must give you access to a conditionally exempt document unless (in the circumstances) access to the document at that time of my decision would, on balance, be contrary to the public interest.

In assessing whether the disclosure of a document would be contrary to the public interest, I must balance any public interest factors for and against disclosure.

Of the public interest factors favouring disclosure listed in s 11B(3) of the FOI Act, two are relevant in this decision. Disclosure would:

- promote the objects of the FOI Act, including increasing scrutiny, discussion, comment and review of the government's activities, and
- inform debate on a matter of public importance

Factors against disclosure include the public interest in the ABS maintaining secure information and data handling systems.

In this case, I am satisfied that the public interest factor against disclosure should be given substantial weight. The public interest is against disclosure.

Giving you access to the material that I have decided is conditionally exempt would, on balance, be contrary to the public interest.

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the Act. An internal review will be conducted, to the extent possible, by an officer of the Office of the Australian Information Commissioner (OAIC) who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (including an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, it is likely that the Information Commissioner will decide (under section 54W(b) of the Act) not to undertake an IC review on the basis that it is desirable that my decision be considered by the AAT.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for internal review or IC review can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you may submit your application by email to enquiries@oaic.gov.au, or by fax on 02 9284 9666.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rocelle Ago', with a long horizontal flourish extending to the right.

Rocelle Ago
Director
Dispute Resolution Branch

24 November 2016