



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2016/201

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: James Smith

DECISION BY: Nathan Heeney
Assistant Secretary
Chief Information Officer

FOI request

In an email dated 22 November 2016, the applicant made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

I refer to the article in The Sydney Morning Herald 'Malcolm Turnbull's department buries 'urgent' review of offensive Wikipedia edits' at the following URL:

<http://www.smh.com.au/federal-politics/political-news/malcolm-turnbulls-department-buries-urgent-review-of-offensive-wikipedia-edits-20161121-gsuhou.html>

This is an FOI request for the following documents:

- 1. The resulting reports of findings from each of the Defence, Foreign Affairs and Trade, Health, Agriculture and Parliamentary Services departments.*
- 2. Documents created by DPMC which may be considered results of the 'initial investigation' by DPMC.*

Authorised decision-maker

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

Searches for relevant documents

Inquiries were made with officers who would be expected to have been involved in the subject-matter of the FOI request and those officers undertook searches of their records.

Documents relevant to the request found as a result of these searches are described in the schedule at Attachment A. For convenience, I have excluded duplicates of documents from the scope of this request.

Decision

My decision on access to the documents is set out in the schedule at Attachment A.

Reasons for decision

Section 37 – Law enforcement

A document is exempt under section 37(2)(b) where disclosure would disclose lawful methods for investigating breaches of law and disclosure would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

The documents contain information about the methods and procedures used by the Department and other agencies to investigate and detect Information Technology (IT) incidents. These incidents could be breaches of law and reportable under the APS Code of Conduct. I am satisfied that disclosing the methods and procedure would be reasonably likely to prejudice the effectiveness of those methods or procedure for investigating breaches in the future.

Section 47E – Public interest conditional exemptions – certain operations of agencies

A document is conditionally exempt under section 47E(d) where 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 information on the methods used to investigate and detect IT incidents on secure networks, the release of such information could reasonably be expected to assist a person to evade detection by those investigative methods, thereby jeopardising the effectiveness of those methods.

Accordingly, subject to the application of the public interest test, I consider that parts of some of the documents are conditionally exempt under section 47E(d) of the FOI Act.

Section 11A(5) – Public interest

Section 11A(5) of the FOI Act provides that access must generally be given to a conditionally exempt document unless it would, on balance, be contrary to the public interest. As I have found the documents to be conditionally exempt under section 47E of the FOI Act, I need to consider whether disclosing the documents would, on balance, be contrary to the public interest.

In determining whether disclosing the documents would, on balance, be contrary to the public interest, I have not taken into account any irrelevant factors identified in section 11B(4) of the FOI Act. I have considered the public interest factors favouring disclosure identified in section 11B(3) and have had regard to the FOI Guidelines.

Public interest factors favouring disclosure

I have considered the following factors favouring disclosure:

- Promoting the objects of the FOI Act. Release of the conditionally exempt material documents would enhance scrutiny, discussion, comment on conduct of public servants.
- Informing debate on a matter of public importance. Release of the conditionally exempt material would inform debate on the conduct of public servants.

Public interest factors favouring non-disclosure

I have considered the following factors against disclosure:

- Protecting the confidentiality of investigations and ensuring the methods in which these investigations are conducted are not undermined.
- Preserving the ability of the Department and other agencies to undertake effectively the management of conducting IT investigations and the reporting of results, which can include national security information.
- Protect the confidentiality of the Department and other agencies investigative methods.

Balancing the public interest

In weighing the public interest factors for and against disclosure, I note the FOI Guidelines provide that the pro-disclosure principle declared in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure.¹ Notwithstanding the weighting towards disclosure and the public interest factors favouring disclosure, I attach more weight to the public interest factors against disclosure. In weighing the factors, I therefore consider the public interest against disclosure outweighs the public interest for disclosure.

I am satisfied that disclosing the conditionally exempt matter in the documents would, on balance, be contrary to the public interest.

Processing and access charges

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

Review rights

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

¹ FOI Guidelines, 'Part 6 – Conditional Exemptions' (version 1.2, March 2013), [6.12].

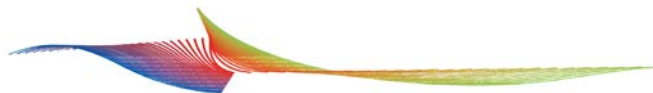
Complaint rights

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>.



Nathan Heeney
Assistant Secretary
Chief Information Officer

15 February 2017



FOI REQUEST: FOI/2016/201
WIKIPEDIA EDITS INVESTIGATION- JAMES SMITH

FOI

Document	Date	Description	Number of total pages	Decision
1	November 2016	Correspondence to PM&C from Department of Agriculture and Water Resources	1	Exempt in full under sections 37(2)(b) and 47E(d) of the FOI Act.
2	November 2016	Correspondence to PM&C from Department of Health—including the original correspondence from PM&C	2	Exempt in full under sections 37(2)(b) and 47E(d) of the FOI Act.
3	November 2016	Correspondence to PM&C from Department of Foreign Affairs and Trade—including the original correspondence from PM&C	3	Exempt in full under sections 37(2)(b) and 47E(d) of the FOI Act.
4	November 2016	Correspondence to PM&C from Department of Defence	11	Exempt in full under sections 37(2)(b) and 47E(d) of the FOI Act.
5	November 2016	Internal brief relating to the investigations	18	Exempt in full under sections 37(2)(b) and 47E(d) of the FOI Act.



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 [How do I make an FOI 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 5218, Sydney NSW 2001
fax: +61 2 9284 9666
email: enquixxx@xxxx.xxv.au
in person: Level 3
175 Pitt Street
Sydney NSW 2000



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: xxxxxxxxx@xxxx.xxx.au

write: GPO Box 5218, Sydney NSW 2001
or visit our website at **www.oaic.gov.au**