



Australian Government
Attorney-General's Department

FOI17/042; 17/2899

30 March 2017

Mr James Smith
By email: foi+request-3151-d5bb1262@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request FOI17/042

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Helen Daniels, Assistant Secretary, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Attorney-General's Department (the department).

On 26 February 2017 you requested access to documents relating to enterprise bargaining ballots. Specifically you sought access to:

'All documents wherein the outcome of any enterprise bargaining ballots were communicated to the department by the entity who undertook the ballots. This shall include the YES/NO vote amounts or percentages as well as any additional information related to the vote. For example, a breakdown of the vote by employee location, or APS level. The scope of this request covers any such documents that were received as a result of EBA offers made to staff under the Workplace Bargaining Policy 2015 or the Australian Government Public Sector Workplace Bargaining Policy 2014.'

On 3 March 2017, the department acknowledged your request.

I have identified that the department holds four documents which fall within the scope of your request. I did this by arranging for a comprehensive search of the department's electronic document management system and making inquiries of staff likely to be able to identify relevant documents.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

With regard to the documents identified in the attached schedule, I have decided to grant access to edited versions of all four documents. More information, including the reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents identified in the attached schedule, I have decided to:

- **grant access in part** to document 1 with an exemption under section 47F (*public interest conditional exemption – personal privacy*)
- **grant access in part** to document 2 with exemptions in part under:
 - section 47E (*public interest conditional exemption – certain operations of agencies*)
 - section 47F (*public interest conditional exemption – personal privacy*)
- **grant access in part** to document 3 with irrelevant matter deleted under section 22 and with an exemption under section 47F (*public interest conditional exemption – personal privacy*), and
- **grant access in part** 4 with irrelevant matter deleted under section 22 and with exemptions under:
 - section 47E (*public interest conditional exemption – certain operations of agencies*)
 - section 47F (*public interest conditional exemption – personal privacy*).

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 your request
- the FOI Act (specifically section 47E), and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Deletion of exempt or irrelevant material (section 22) – documents 3 and 4

Section 22 of the FOI Act relevantly provides that:

- (1) This section applies if:*
- (a) an agency or Minister decides:*
- (i) to refuse to give access to an exempt document; or*
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
- (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document modified by deletions, ensuring that:*
- (i) access to the edited copy would be required to be given under section JJA (access to documents on request); and*
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and ...*

As advised in the department's acknowledgement of your request, it is the usual practice of the department to not release the names and contact details of junior officers of the department, where that personal information is contained in documents within scope of a request.

The department also advised that, unless you state that you would like the personal information of junior officers considered as part of your request, this information will be considered irrelevant to the scope of your request.

As you did not advise that you sought to have the personal information of junior officers considered as part of your request, I have redacted information of this kind in documents 3 and 4 under subparagraph 22(1)(a)(ii) (irrelevant matter).

Public interest conditional exemption- personal privacy (section 47F) – documents 3 and 4

Section 47F of the FOI Act relevantly provides:

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).

Documents 3 and 4 contain the names of individuals, personal signatures and contact details (including mobile telephone numbers) of staff from the Australian Election Company and Cirrena IVS (Independent Voting Solutions), these companies have facilitated the department's enterprise agreement voting.

I am satisfied that this information is not readily accessible to the public, and that its disclosure would be unreasonable.

Accordingly, I am satisfied that the conditional exemption for personal privacy (section 47F) applies to that material.

Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to public interest. The public interest test is set out in section 11A(5) of the FOI Act. My weighing of the public interest factors follows.

Public interest considerations

Section 11B of the FOI Act lists the public interest factors favouring access. Of these factors, I consider that one is relevant to your request: promoting the objects of the FOI Act. The FOI Act does not list any specific factors weighing against disclosure, however, I have identified the following factors as relevant: disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.

In my view, the factor against disclosure of the documents outweighs the factor in favour of disclosure. Accordingly, I am satisfied that the documents are exempt under section 47F of the FOI Act and that disclosure would be contrary to the public interest.

I note that redaction of this personal information does not prevent the substance of the material in the documents from being released.

In accordance with subsection 11B(4) of the FOI Act, I have not taken into account any irrelevant considerations.

On balance, I consider these factors against disclosure outweigh the factors favouring disclosure and that disclosure of material in the documents would be contrary to the public interest. Accordingly, I am satisfied that material in the documents is exempt from disclosure under section 47F of the FOI Act.

Public interest conditional exemption – Certain operations of agencies (paragraphs 47E(c) and (d)) – documents 2 and 4

Section 47E relevantly provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Following the consolidation of the Australian Government Solicitor (AGS) and the department on 1 July 2015, the department now has offices in all Australian capital cities. Some of the information contained in documents 2 and 4 relates to voting outcomes in geographical areas where departmental personnel are located, or differences in voting outcomes. Disclosure of this information would have an adverse effect on the operations of this department substantially undermining the maintenance of a unified, cohesive, collaborative and positive culture. Due to the small number of departmental personnel located in a particular geographical location, the anonymity of employees could be compromised.

Certain material in documents 2 and 4 disclose, either directly or by implication, voting results from particular areas of the department, including AGS. The department has invested significant resources in building a unified culture following the consolidation of AGS with this department. As part of the consolidation process, I consider that disclosure of voting differences between staff from AGS and the rest of this department could work against the maintenance of a unified culture. Accordingly, I consider that disclosure of this information could reasonably be expected to have a substantial adverse effect on the management of personnel and on the proper and efficient conduct of the operations of the agency.

Public interest considerations

Of the public interest factors listed in section 11B of the FOI Act favouring access, I consider that one is relevant to your request: promoting the objects of the FOI Act. I have identified the following factor as relevant against disclosure: disclosure could reasonably be expected to adversely affect the proper and efficient operation of this department.

Disclosure of the information would, or could reasonably be expected to, have an adverse effect on the proper and efficient administration of the department's operations. Without departmental personnel having confidence that easily identifiable voting data will be treated in confidence, it is foreseeable that this could adversely undermine the management of personnel and operations within this department.

Also, I consider that this culture could be undermined by the disclosure of material that directly or implicitly discloses voting results from particular areas of the department. I am satisfied that it is in the public interest that the department functions well with a unified and positive culture for the benefit of all personnel. On that basis I consider that the disclosure of certain material within documents 2 and 4 could therefore have a detrimental impact on the proper and efficient conduct of the operations of the department.

On balance, I consider the factors against disclosure outweigh the factors favouring disclosure, and that disclosure of some of the material in documents 2 and 4 would be contrary to the public interest.

Your review rights

If you are dissatisfied with my decision or the searches we did to locate documents related to your request, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Privacy Section
 Strategy and Delivery Division
 Attorney-General's Department
 3-5 National Circuit
 BARTON ACT 2600

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, SYDNEY NSW 2001
in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please contact Monique, FOI case manager, by telephone on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Helen Daniels', written in a cursive style.

Helen Daniels
Assistant Secretary

Attachments

1. *Schedule of documents*
2. *Documents 1-4*