



## Australian Government

### Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI/2017/050

#### *FREEDOM OF INFORMATION ACT 1982*

**REQUEST BY:** Mr James Smith

**DECISION BY:** Ms Emma Greenwood  
Chief People Officer  
People Branch

#### **FOI request**

In an email dated 26 February 2017 to the Department of the Prime Minister and Cabinet (the Department), the applicant made a request under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

*I request 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:*

*Workplace Bargaining Policy 2015*

*or*

*Australian Government Public Sector Workplace Bargaining Policy 2014*

#### **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.

#### **Steps taken to identify relevant documents**

The Department's People, Capability and Performance Branch is the area with primary responsibility for the subject-matter of the FOI request. Accordingly, the following were searched to identify potentially relevant documents:

- the electronic group drive for the People, Capability and Performance Branch ; and
- email accounts of relevant officers expected to have had involvement in the subject-matter of the request of their email accounts, files and other documentary holdings for relevant documents.

As a result of these searches, four relevant documents were identified. The documents relevant to this FOI request are described in the schedule at Attachment A.

## **Decision**

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

In making this decision, I have had regard to the following material:

- The FOI request.
- The documents identified as relevant to the FOI request.
- Submissions made by third-parties in response to consultations under section 27A of the FOI Act.
- The FOI Act.
- The ‘Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*’ (the FOI Guidelines).

## **Reasons for decision**

Documents 1- 4 have had material that is exempt under section 47F (Public interest conditional exemptions – personal privacy) redacted, as providing access to that matter would be contrary to the public interest.

Documents 1 and 3 contain unique identifiers for each individual vote. Each identifier is unique and is not attributed to an individual as the ballot was conducted by an independent ballot service to protect the privacy of the Departments staff.

### *Public interest conditional exemption – personal privacy (s47F)*

Section 47F(1) of the FOI Act relevantly provides:

- 1) *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).*

### *Does the document contain personal information?*

Section 4(1) of the FOI Act states that ‘personal information’ has the same meaning as in the *Privacy Act 1988* (the Privacy Act). Section 6(1) of the Privacy Act defines ‘personal information’ to mean information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

I am satisfied that parts of Documents 1-4 contain the personal information of staff employed by the independent ballot service provider at the time when the document was created and contains personal information within the meaning of the FOI Act and the Privacy Act. The personal information comprises names, email addresses, mobile phone numbers and signatures. I am satisfied that the signatures and other information is a personal nature and that disclosure of it would be unreasonable.

*Would disclosure of the personal information be unreasonable?*

Section 47F(2) of the FOI Act states that in determining whether disclosure of the document would involve the unreasonable disclosure of personal information, an agency must have regard to the following matters:

- the extent to which the information is well known;
- 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;
- the availability of the information from publicly accessible sources;
- any other matters that the agency or Minister considers relevant.

It is not apparent to me that the personal information in Documents 1-4 is well known. I am not aware that the personal information in the documents is available from publicly accessible sources. Other matters that I consider relevant are the submissions made by third parties regarding disclosure of the personal information.

Having regard to the matters that section 47F(2) of the FOI Act requires me to have regard to, I am of the view that disclosure of the personal information would be unreasonable. I therefore find that the personal information is conditionally exempt within the meaning of section 47F(1) of the FOI Act.

In my view, the protection of the third parties' right to privacy of their personal signatures and other personal details outweighs the factors in favour of disclosure.

### **Processing and access charges**

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

### **Publication of the documents**

Under section 11C of the FOI Act, the Department will make arrangements to publish the documents released to the applicant on the Department's website in its FOI Disclosure Log. Section 11C(6) of the FOI Act requires agencies to publish information released within 10 working days of granting the applicant access to the documents.

### **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>.

Yours sincerely



Emma Greenwood  
Chief People Officer  
People Branch

26<sup>th</sup> April 2017

FOI/2017/050  
SCHEDULE OF DOCUMENTS

FOI

<b>Document</b>	<b>Date</b>	<b>Description</b>	<b>Number of pages</b>	<b>Decision</b>
1	19/10/2015	Corpvote Ballot Result Declaration report	80	Partially exempt section, 47F of the FOI Act
2	19/10/2015	Corpvote Ballot Result Declaration	1	Partially exempt section, 47F of the FOI Act
3	22/02/2016	Corpvote Ballot Result Declaration report	40	Partially exempt section, 47F of the FOI Act
4	26/02/2016	Corpvote Ballot Result Declaration	1	Partially exempt section, 47F 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](mailto: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](http://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](http://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:** [xxxxxxxx@xxxx.xxx.au](mailto:xxxxxxxx@xxxx.xxx.au)

**write:** GPO Box 5218, Sydney NSW 2001  
or visit our website at [www.oaic.gov.au](http://www.oaic.gov.au)