



Our reference: FOIREQ17/00012

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 4 March 2017, you made the following request through the www.righttoknow.org.au website:

The Project TV reported on changes proposed by the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016, namely the power for the Secretary of the Commonwealth Department of Veterans' Affairs (DVA) to "leak" (as Deputy Prime Minister Barnaby Joyce stated in his interview with The Project TV) otherwise protected personal information about a veteran or veterans who complain about DVA's regular abuses of power and unethical behaviour.

In a statement provide by the Minister of Veterans' Affairs Dan Tehan, to The Project TV... the Minister for DVA said:

"This Bill passed the House with bipartisan support after three months of public exposure, which included the scrutiny of two Senate committees, a public hearing and submissions, cross-party consultation, consultation with the Privacy Commissioner and the Commonwealth Ombudsman and consultation with the ex-service community. The government took on board all suggestions and recommendations throughout this process. The Bill has also undergone a privacy impact assessment. We have consulted extensively and nothing will happen without the support of Parliament."

I request copy of all notes, records, minutes, and any and all other documents and records in the OAIC's possession and/or control that relate to this "consultation with the Privacy Commissioner" that DVA and/or the Minister for Veterans' Affairs or any other Commonwealth official or Minister had with the OAIC (whether directly with the Privacy Commissioner or any staff member of the OAIC).

As part of your request, you agreed to exclude direct contact details such as telephone numbers and email addresses of agency staff members.

On 23 March 2017, the OAIC advised you that part of your request was transferred to the Department of Veterans' Affairs (DVA). The OAIC confirmed that part of the request remained with the OAIC.

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 that fall within the scope of your FOI request. I have decided to give you access to 7 documents in full and 33 documents in part (the documents). I have decided that 5 documents are exempt. In making my decision, I have relied on the deliberative processes exemption (47C), the certain operations of agencies exemption (s 47E(d)), and the personal privacy exemption (s.47F) 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 5 days from this decision.

I have set out my reasons for this decision below.

Reasons for decision

Provision of an edited copy of 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 40 documents that are released in full or part, with exempt and irrelevant material deleted.

Conditional exemption – operations of an agency (s.47E(d))

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 information that would affect the operations of the OAIC. The OAIC depends on agencies and organisations voluntarily approaching the OAIC to consult regarding privacy. There is no statutory requirement for the Australian Information or Privacy

Commissioners to be consulted during the introduction of legislation such as the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016.

The documents contain comments made by agencies to the OAIC during the consultation regarding the introduction of the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016. If comments made to the OAIC during these consultations were to be released into the public domain agencies and organisations would not readily approach the OAIC for advice. The OAIC relies on agencies being open in consultation regarding privacy. If the OAIC was not being consulted in relation to government privacy policy formulation, it would affect the operations of the OAIC undertaking its privacy functions.

For this reason, I am satisfied that disclosing material relating to DVA's legislative consultation and operating environment would have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC, and that the relevant documents are conditionally exempt under section 47E(d) of the FOI Act.

Conditional exemption – deliberative processes (s.47C)

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

The documents contain the deliberations of the OAIC in regards to the Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016. They show the process of reflection of a particular course of action of the OAIC and the exchange of opinions and recommendations between OAIC officers during the consultation process with DVA and other Commonwealth government officials.

I am satisfied if disclosed, the documents would disclose matter in the nature of, or relating to, deliberation that has taken place in the course of deliberative processes involved in the functions of the OAIC.

Conditional exemption – personal privacy (s.47F)

Section 47F of the FOI Act protects personal privacy, and provides that a document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person, including deceased persons.

'Personal information' means 'information or an opinion (including information forming part of database), whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

The documents you have requested include information about other individuals who have not provided their consent for information to be released under FOI.

Bearing all the circumstances in mind, I am satisfied that the release of the information would be an unreasonable disclosure of personal information, and that the documents are exempt under section 47F of the Act.

The public interest test

In finding that the document 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 the 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 the factors for and against disclosing the document.

Of the public interest factors favouring disclosure listed in s 11B(3) of the FOI Act, two are relevant to this decision access to the documents in the public interest include whether access to the document would do any of the following:

- promote the objects of the FOI Act, including increasing public participation in Government processes and 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 that the OAIC maintain its ability to regulate privacy and provide advice to agencies on privacy policy proposals and decisions.

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.

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 Administrative Appeals Tribunal.

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

Complaints about the handling of FOI requests

If you are not satisfied with the way that your FOI request has been handled, you can complain to the Information Commissioner or the Commonwealth Ombudsman.

Should you choose to lodge a complaint with the Information Commissioner, your matter will be dealt with by the FOI Complaints area, independently of the FOI request or review process. You can address any complaint to the Director of Dispute Resolution, FOI Complaints, or use the application form available at www.oaic.gov.au/foi/complaints.html.

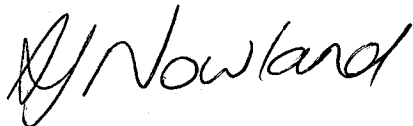
If you wish to complain to the Commonwealth Ombudsman, they can be contacted on 1300 363 072. Other contact details are available at their web site: www.ombudsman.gov.au.

Applications for internal review, IC review, or complaints to the Information Commissioner can be submitted to:

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

Alternatively, you may submit your application or complaint by email to enquiries@oaic.gov.au, or by fax on 02 9284 9666. For further information, please call our enquiries line on 1300 363 992.

Yours sincerely

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

Amanda Nowland
Freedom of Information
Dispute Resolution

3 April 2017