

11 August 2017

Call Centre Employee  
[www.righttoknow.org.au](http://www.righttoknow.org.au)

Dear Applicant

### **Request for access to documents under the Freedom of Information Act 1982**

I refer to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act) sent to the ACMA on Friday, 16 June 2017 at 7:50pm and to my letter of acknowledgement dated 26 June 2017.

You have sought access to copies of email correspondence sent by a named ACMA officer to a named corporate entity "in the last six months" and to "reply emails". As I advised you by my letter dated 26 June 2017, I have understood your reference "in the last six months" to be the period from 15 December 2016 to 16 June 2017.

On 6 July 2017 I wrote to confirm that third party consultation would be undertaken under section 27A of the FOI Act.

My decision on your request is set out below.

#### **Material taken into account**

In making my decision on access I have taken the following material into account:

- the FOI Act,
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines), and
- the views of the third party consulted under section 27A of the FOI Act.

#### **Documents of an agency**

Section 11 of the Act confers a right to obtain access to 'a document of an agency' unless the document is exempt. A document of an agency is broadly defined to be a document in the agency's possession, whether created or received in the agency (subsection 4(1) of the FOI Act).

The objects of the Act underscore the importance of public access to information held by the government to promote Australia's representative democracy by increasing public participation in government processes and the transparency of government activities (see section 3 of the FOI Act).

In my view, the documents I identified as falling within the terms of your request, are not documents of an agency within the meaning of the FOI Act.

The ACMA permits use of ACMA email accounts for 'a reasonable level of personal use'. The ACMA's 'possession' of the email correspondence has arisen because the ACMA's email address was used. However, the correspondence came into existence in the context of a personal and private matter. It was not sent or received by the ACMA officer in their capacity as a public servant and staff member of the ACMA. The correspondence was sent and received by the officer in their personal capacity in respect of a private matter. It does not relate to the processes or activities of the ACMA.

Even if the documents are documents of an agency within the meaning of the FOI Act, I consider that they are exempt under section 47F of the FOI Act – *Documents affecting personal privacy* and that disclosure would be contrary to the public interest. I also consider redaction under section 22 of the FOI Act would not be appropriate.

My reasons are set out below.

### **Decision on access and reasons**

#### **Section 47F**

Section 47F of the FOI Act conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not (subsection 4(1) of the FOI Act).

This exemption is intended to protect the personal privacy of individuals [6.124 of the Guidelines].

A person's name, residential address, contact details, date of birth, financial information (including bank and credit card account details, goods purchased and receipts), details of the issues which are the subject of the correspondence, customer account and billing and customer reference numbers are personal information within the meaning of the FOI Act. The email correspondence contains the above personal information of the ACMA officer.

It also contains the names and contact details of other individuals with whom the ACMA officer was dealing and corresponding.

The individuals are identified and identifiable by this information.

### **Unreasonable disclosure of personal information**

The FOI Act provides that an agency must have regard to the following matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information:

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

(Subsection 47F(2)).

Other factors which may be relevant include:

- whether release of the documents would cause stress on the third party,
- whether no public purpose would be achieved through release,
- the nature, age and current relevance of the information,
- any detriment that disclosure may cause to the person to whom the information relates,
- any opposition to disclosure expressed or likely to be held by that person,
- the circumstances of an agency's collection and use of the information,
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act,
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

[Paragraphs 6.142-6.143 of the Guidelines.]

The Guidelines also make clear that there needs to be 'careful consideration of the exemption where the personal information does not relate to the public servant's usual duties and responsibilities' [paragraph 6.157 of the Guidelines].

As noted above, the email correspondence which falls within the terms of your request relates to a personal and private matter which is relatively current or ongoing. The correspondence was created and received by the ACMA officer in

their personal capacity as a member of the public and not in their capacity as a public servant. It does not relate to the processes or activities of the ACMA. The personal information was not included as a consequence of the officer's usual duties or responsibilities. Release of the information would therefore not advance the public interest in government transparency and integrity.

The personal information is also confidential and sensitive. The personal information of the ACMA officer and other third persons identified in the documents is not publicly available or otherwise publicly accessible. There is no public purpose achieved through release.

In my view, disclosure of the documents would involve the unreasonable disclosure of personal information within the meaning of section 47F of the FOI Act.

### **Contrary to the public interest**

If a document is conditionally exempt under section 47F of the FOI Act, access must be given unless in the circumstances giving access would, on balance, be contrary to the public interest (subsection 11A(5) of the FOI Act). In determining whether access would, on balance, be contrary to the public interest, a decision maker must have regard to the Guidelines issued under section 93A of the FOI Act (subsection 11B(5) of the FOI Act).

The FOI Act does not list factors weighing against disclosure. These factors will depend on the circumstances. The Guidelines make clear that harm is an important consideration that should be weighed when determining where the balance lies. A disclosure which may unreasonably affect a person's privacy is a harm which should be considered [6.21 of the Guidelines].

Promotion of the objects of the FOI Act is a public interest factor favouring disclosure. The objects of the FOI Act promote transparency in government processes and activities by increasing scrutiny, discussion, comment and discussion of government decision making. In my view, release of the documents, the subject of your request, would not promote the objects of the Act as the documents relate to a personal and private matter and not to the processes or activities of government.

As noted above, the ACMA permits use of ACMA email accounts for 'a reasonable level of personal use'. This is not a situation where the personal information has been provided to the ACMA. The ACMA did not 'collect' the information. Rather, the personal information was provided by and to an individual, who happens to be an ACMA officer, in their capacity as a member of the public and not in their capacity as a public servant. It was not included in

these documents as a consequence of the officer's usual duties or responsibilities. The personal information is also confidential and sensitive.

Also, as noted above, the issues the subject of the correspondence, are relatively current or ongoing. Release may have an adverse impact on these issues, which are personal and private. The personal information of the ACMA officer and other third persons is not publicly available or otherwise publicly accessible. In my view, disclosure of the documents would cause harm, as it would unreasonably affect the officer's privacy.

In light of above factors, I consider that the balance of public interest lies in protecting the personal privacy of the third parties identified in the documents. Accordingly, disclosure would be contrary to the public interest.

For the reasons noted above, particularly with respect to my view that the documents are not documents of an agency, I do not consider that redaction under section 22 of the FOI Act is appropriate in the circumstances. Accordingly, the documents are exempt in their entirety.

I also do not consider that it is appropriate in the circumstances to prepare a schedule of documents.

#### **Your rights of review**

Please find enclosed the ACMA's Information Sheet entitled *Freedom of Information Act 1982 - Rights of Review of Applicants*.

Yours sincerely



Megan Chalmers

Compliance and Enforcement Policy Co-ordinator

Authorised decision maker under subsection 23(1) of the FOI Act

Encl.



## INFORMATION SHEET

### ***Freedom of Information Act 1982 - Rights of Review***

The purpose of this information sheet is to set out the rights of applicants to seek review of decisions made by the ACMA under the *Freedom of Information Act* (FOI Act).

#### **1. Review of decisions**

If you are dissatisfied by any decision made by an ACMA decision maker concerning access to documents or charges imposed for processing your request you can ask the ACMA to conduct a review of the decision or you may apply to the Australian Information Commissioner (the Information Commissioner) for a review.

##### **1.1 Application for review by the ACMA**

If you want the ACMA to conduct a review of the decision you must write to the ACMA. You should set out why you are dissatisfied with the decision made. The review will be undertaken by a different ACMA decision maker.

##### **Time within which to seek review**

Generally, your request must be made within 30 days of receiving notice of the decision (see section 54B of the FOI Act).

The application may be sent to the ACMA in any of the following ways:

Hand delivery:	Level 5, The Bay Centre, 65 Pirrama Road, Pyrmont, NSW, 2000  Red Building, Benjamin Offices, Chan Street, Belconnen, ACT, 2617  Level 32, Melbourne Central Tower, 360 Elizabeth Street, Melbourne, VIC, 3000
Post:	PO Box Q500, Queen Victoria Building, NSW, 1230  PO Box 78, Belconnen, ACT, 2616  PO Box 13112 Law Courts, Melbourne, VIC, 8010
E-mail:	<a href="mailto:foi@acma.gov.au">foi@acma.gov.au</a>

An application hand delivered or posted to the ACMA should also be marked to the attention of the FOI Co-ordinator.

If, after this review, you remain dissatisfied you may ask the Information Commissioner to conduct a review (see the discussion below).

### **1.2 Application for review by the Information Commissioner**

If you are dissatisfied by a decision made by an ACMA decision maker you may ask the Information Commissioner to conduct a review.

The request for review by the Information Commissioner must be made in writing and you should set out why you are dissatisfied with the decision. You must give details of how notices may be sent to you and include a copy of the relevant the decision.

#### **Time within which to seek review**

If it relates to an access refusal decision (which includes a decision under section 29 relating to the imposition of a charge or the amount of a charge) your request should generally be made within 60 days of receiving notice of the decision (see sections 53A and 54S of the FOI Act).

The application may be sent to the Office of the Australian Information Commissioner (the OAIC) in any of the following ways:

Hand delivery:	Level 3, 175 Pitt Street, Sydney, NSW
Post:	PO Box 5218, Sydney, NSW, 2001
Email:	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
On-line:	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>
Facsimile:	02 9284 9666

## **2. Right to make a complaint**

If you have concerns about any action taken by the ACMA in the performance or exercise of its functions or powers under the FOI Act, you may make a complaint to the Information Commissioner.

You are encouraged by the OAIC to contact the ACMA directly to try to resolve any concerns of that kind before making a complaint to the Information Commissioner.

If you make a complaint, it must be in writing and identify the ACMA as the agency about which you wish to complain.

A complaint may be sent to the Information Commissioner by post, email, online or facsimile (see the details set out above at 1.2).