



Australian Government

Department of the Prime Minister and Cabinet

FOI

FOI/2017/123/IR

ONE NATIONAL CIRCUIT
BARTON

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Alan Cole

**DECISION BY: Ms Paula Ganly
First Assistant Secretary
Ministerial Support Division**

The request for internal review

By email dated 21 August 2017, Mr Alan Cole (the applicant) requested an internal review of a decision (the primary decision) dated 18 August 2017 made by Mr Gerard Martin, Assistant Secretary, Ceremonial and Hospitality Branch, Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act).

The applicant's request for internal review was in the following terms:

I would like to request an administrative review of this refusal. I would like to draw attention to FOI/2014/215 and this document

https://www.pmc.gov.au/sites/default/files/foi-log/FOI-2014-215%20-%20Documents%20relevant%20to%20FOI%20request%20marked-up_Redacted_0.pdf.

This document provided hundreds of names for 6 different events which would have taken even longer to do than my request. The only names redacted are from the PMO everyone else including foreign government officials has been published. So my question is why were you able to do this where the timescale would be greater but not my request where the scope was even smaller?

If you could advise why this FOI was granted and mine was refused in your review or grant the information I requested which was less than this FOI request I linked too.

Under section 54(2) of the FOI Act an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

Authorised decision-maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision. I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Recognition of delay

The Department takes its responsibilities under the FOI Act very seriously and regrets the significant delay in responding to your internal review request.

I also take this opportunity to apologise for the delay in providing you with this decision. I assure you that the decision-maker and the FOI processing officers worked through the request as quickly as possible.

Steps taken to identify relevant documents

Having regard to the terms of the FOI request and where any documents potentially relevant to the FOI request might be found, the relevant electronic systems were searched.

As a result of these searches, two relevant documents were identified and are described in the schedule at Attachment A.

Internal review decision

I have carefully revised the primary decision, which was to refuse the FOI request on the ground that processing would be a substantial and unreasonable diversion of the Department's resources from its other operations under section 24(1) of the FOI Act.

I have decided to set aside the primary decision and determined that the documents are exempt in part under section 33 of the FOI Act.

Copies of the documents that can be released to you are attached.

In reaching my decision I have had regard to:

- the terms of the FOI applicant's initial FOI request;
- the documents identified as relevant to the FOI request in the primary decision;
- the primary decision;
- the applicant's request for internal review;
- submissions made by the Embassy of Israel, the Singapore High Commission, the Prime Minister's Office and the Australian Federal Police;
- the FOI Act;
- the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*' (the FOI Guidelines).

Reasons for decision

Section 33 — Documents affecting national security, defence or international relations

Section 33 of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth or;
 - (iii) the international relations of the Commonwealth; or
- (b) Would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

The phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.¹ The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship.²

The Embassy of Israel objected to the release of information concerning security personnel ‘due to security purposes and in order not to expose ... security arrangements’.

Having regard to the submissions made by the Embassy of Israel and the relevant law on foot, I am satisfied that material disclosing security arrangements is not to be released as the release of the information would reveal security arrangements and capacity and also jeopardise the international relations of the Commonwealth.

In light of the above, I have determined that these parts of both documents are exempt in part under section 33(a)(iii) of the FOI Act.

Deletion of exempt or irrelevant matter

Section 22 of the FOI Act provides that exempt or irrelevant information may be deleted from a copy of a document and access granted to such an amended copy, where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

In accordance with the policy as advised to the applicant in the Department’s email dated 27 July 2017, I find that the names and contact details of Australian Public Service Officers not in the Senior Executive Services (SES) wherever they occur in the documents to be irrelevant to the FOI request.

¹ FOI Guidelines, ‘Part 5 – Exemptions’, Version 1.4, December 2016, [5.36].

² FOI Guidelines, ‘Part 5 – Exemptions’, Version 1.4, December 2016, [5.37].

I also find the names of people who did not attend the functions to be irrelevant to the FOI request.

Other information that was deleted from the documents under section 22 of the FOI Act is information that does not relate to names of attendees and is therefore irrelevant to the terms of your request.

I consider that it is reasonably practicable to copy the documents with the exempt and irrelevant information deleted, and that the applicant would wish to be granted access to the documents with the deletions.

Review rights

Information about the applicant's review rights 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>.


Paula Ganly
First Assistant Secretary
Ministerial Support Division
23 November 2017



FOI REQUEST: FOI/2017/123
SCHEDULE OF DOCUMENTS

ATTACHMENT A

FOI

Document	Date	Description	Number of pages	Decision
1	12/10/2016	List of attendees – Luncheon in hounor of His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore	47	Release in part with material exempt under section 33(a)(iii) of the FOI Act and with irrelevant material deleted under s22 of the FOI Act.
2	22/02/2017	List of attendees – Luncheon in hounr of the Prime Minitser of the State of Israe	12	Release in part with material exempt under section 33(a)(iii) and with irrelevant material deleted under s22 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