



Australian Government
Department of Employment

Mr James Smith

By email: foi+request-3895-d33e61c9@righttoknow.org.au

Dear Mr Smith

1. I refer to your correspondence, dated 8 August 2017, to the Department of Employment (the Department), requesting access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to the following documents:

...the ten most recent instances where an employee has sought information, advice, guidance, or opinion on their social media use in a private capacity.

2. You limited the scope of your request to:

- *the original request from the employee*
- *the agency/department's response*
- *any follow-up questions and response*
- *only those sent to a relevant HR / conduct / social media (or similar) team (rather than managers across all areas of the organisation)*
- *where the original request was created in the last 2 years.*

Decision on access to documents

3. I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below. The Schedule of Documents at **Attachment A** (the Schedule) summarises my decision as it applies to the documents covered by your request.
4. I am advised that the Department has in its possession two (2) documents (2 pages) that fall within the scope of your request.
5. Having considered these documents, I have decided to grant access in part to both documents. I have decided that both pages contain material that is conditionally exempt under subsection 47F(1) of the FOI Act because its disclosure would involve the unreasonable disclosure of personal information about individuals and, pursuant to subsection 11A(5) of the FOI Act, the material is not required to be disclosed because disclosure at this time would, on balance, be contrary to the public interest.
6. In reaching my decision, I took the following material into account:
 - your correspondence, dated 8 August 2017, outlining the particulars of your request;
 - documents falling within the scope of your request;
 - the FOI Act;

- consultations with departmental officers about the nature of the documents; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (OAIC Guidelines).

Reasons for Decision

Section 47F of the FOI Act

7. Subsection 47F(1) of the FOI Act 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).
8. The term 'personal information' is defined in section 4 of the FOI Act as having the same meaning as in the *Privacy Act 1988* (Cth), that is:

...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.*
9. The OAIC Guidelines relevantly provide that personal information can include a person's name, address and telephone number (paragraph 6.130 of the OAIC Guidelines).
10. I have decided that two (2) documents, as referred to in the Schedule, contain personal information about individuals, specifically, names, contact details of individuals, and information about the personal working arrangements of individuals.
11. I have decided that it would be unreasonable to release this information for the following reasons:
 - the information is not well known;
 - it is not available in full or in part from publicly-accessible sources;
 - no public purpose would be achieved through release; and
 - disclosure of the documents is likely to cause stress to the relevant individuals.
12. On this basis, I have decided that the information is conditionally exempt under subsection 47F(1) of the FOI Act.
13. Under subsection 11A(5) of the FOI Act, the Department must give you access to this material unless, on balance, it would be contrary to the public interest to do so.
14. In weighing up the public interest factors for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account the extent to which disclosure would promote the objects of the FOI Act by informing debate on a matter of public importance, however I do not consider that this factor carries much weight in the circumstances, given the prevalence of personal information in the documents.

15. I have weighed against the relevant factors the extent to which disclosure:
- could reasonably be expected to prejudice the protection of individuals' right to privacy; and
 - would circumvent existing procedures and protocols used by the Department to protect the privacy of its staff.
16. Based on the above, I have decided that, in the circumstances, the public interest for disclosure of the information is outweighed by the public interest against disclosure.
17. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) in making this decision.
18. In summary, I have decided that this information is conditionally exempt under subsection 47F(1). Furthermore, I have decided that on balance, it would be contrary to the public interest to release this information.

Rights of review

19. I have set out your rights to seek a review of my decision at **Attachment B**.
20. Should you have any enquiries concerning this matter, please do not hesitate to contact me via email: foi@employment.gov.au.

Yours sincerely



James Ramsay
Government Lawyer
Information Law Team
Corporate Legal
6 September 2017

Attachment A

Schedule of Documents

Document Number	Page number	Date	Description	Comments
1	1	11/08/2017	Email from People Branch regarding social media and the APS	Release in part Exemption claimed: section 47F (personal information)
2	2	24/11/2015	Email from staff member to HR policy	Release in part Exemption claimed: section 47F (personal information)

Attachment B - Your rights of review

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: The Information Law Coordinator
Information Law, Practice Management and Corporate Advising Branch
Department of Employment
Location Code: C12MT1-LEGAL
GPO BOX 9880
CANBERRA ACT 2601

Email: foi@employment.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC or Commonwealth Ombudsman about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

We are advised by the AIC that applications for review or complaint must be lodged with the AIC in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218
Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street
SYDNEY NSW 2000

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.