



Australian Government

Department of Communications and the Arts

Mr Ron Andruff

Right to Know (via email: foi+request-4091-df367cc8@righttoknow.org.au)

17 November 2017

Dear Mr Andruff

Freedom of Information Request FOI 20-1718 – Notice of Access Decision

I refer to your email of 15 September 2017 to the Department of Communications and the Arts (the Department) requesting access to documents under section 15 of the *Freedom of Information Act 1982 (FOI Act)*.

I am an officer authorised by the Secretary under subsection 23(1) of the FOI Act to make decisions about requests for access to documents under the FOI Act.

I have made a decision on your request, and provide you with notice in writing of my decision.

A. BACKGROUND

1. On 15 September 2017, you requested access to documents under section 15 of the FOI Act. These documents are:

“...• a copy of the PPB Report;

• copies of any findings or reports relating to "the under-reporting of FBT to the ATO" as noted in item 4(a) of the minutes of the Board meeting held on 13 February 2017;

• internal meeting minutes or any other record (in any form) of matters discussed at in-camera discussions held during auDA's board meeting on 24 March 2016 relating to the termination of the ex-CEO Chris Disspain (excluding the board minutes dated 24 March 2016 which are published on the auDA website); and

• copies of any reports or other records relating to expenses incurred by the ex-CEO Chris Disspain during the period(s) the subject of the PPB Review and rational for extensive international travel and explanation of benefit to auDA and the Australian public in general...”

2. On 21 September 2017, the Department acknowledged your request.

3. On 3 October 2017, the First Assistant Secretary Arts advised the FOI Coordinator that searches had identified documents in accordance with your request. This advice also stated that

the documents contained information that may be exempt from disclosure under the FOI Act, and that the Department may need to consult third parties potentially affected by disclosure.

4. The requested documents, identified through searches of departmental electronic document management, email and parliamentary correspondence systems, are listed in the Schedule of Documents at Attachment A.

5. On 6 October 2017, the Department gave you notice that you are liable to pay a charge under section 29 of the FOI Act, and provided a preliminary charge assessment of \$225.72. As this amount exceeds \$100, you must pay a deposit of 25 per cent (\$56.43).

6. The Department received your payment by direct debit on 18 October 2017. On 19 October 2017, the Department sent you Receipt No. 8811391 (dated 18 October 2017) for payment of a deposit of \$56.43 and notified you of the extension of the processing period to consult third parties potentially affected by disclosure.

7. On 26 October 2017, the Department initiated external consultation with an affected third party under section 27 of the FOI Act.

8. On 3 November 2017, the Department received a request from the third party for an extension of time to respond to the consultation request. On the same day, the Department received notice of approval of the Department's request for an extension of the processing period under section 15AB of the FOI Act.

9. On 14 November 2017, the Department received exemption contentions from the affected third party (I will refer to this as Contention 1).

10. On 15 November 2017, in response to an internal consultation request, the First Assistant Secretary Arts advised the FOI Coordinator:

"... the Department's working relationship with auDA and our role as observer on the auDA board relies on access to information which the auDA board would reasonably expect to remain confidential. This is particularly important at this time as the Department commences a review of auDA on behalf of the Minister."

B. DECISION

11. I have decided to refuse to give access to the documents you requested as follows:

- a. documents number 1, 2, 4, 5, 6, 9 and 12 in part are exempt under section 22 of the FOI Act, and an edited copy cannot be prepared with the exempt material deleted, to which access would be required to be given by section 11A of the FOI Act;
- b. documents number 1, 3, 9 and 13 in part and documents number 10 and 11 in full are exempt under section 42 of the FOI Act, and an edited copy cannot be prepared with the exempt material deleted, to which access would be required to be given by section 11A of the FOI Act;

- c. document number 9 in part is exempt under section 47C of the FOI Act, and an edited copy cannot be prepared with the exempt material deleted, to which access would be required to be given by section 11A of the FOI Act;
- d. documents number 1, 3, 4, 5, 6, 7, 8, 12 and 13 in part are exempt under section 47F of the FOI Act, and an edited copy cannot be prepared with the exempt material deleted, to which access would be required to be given by section 11A of the FOI Act; and
- e. documents number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in full are exempt under section 47G of the FOI Act.

C. MATERIAL ON WHICH MY DECISION IS BASED

12. I base my decision on the following material:

- a. your access request, dated 15 September 2017;
- b. the documents identified by the Department as relevant to your access request;
- c. the relevant provisions of the FOI Act;
- d. the *Australian Information Commissioner's FOI Guidelines* made under section 93A of the FOI Act (the 'FOI Guidelines');
- e. relevant case law;
- f. the Department's *FOI Policy*;
- g. information and advice from the Department's FOI Coordinator;
- h. information and advice from officers within the Department's Arts Division; and
- i. exemption contentions made by third parties potentially affected by the decision.

D. FINDINGS ON MATERIAL QUESTIONS OF FACT

13. I find that the requested documents, identified through searches of departmental electronic document management and email systems, are listed in the Schedule of Documents at Attachment A.

E. REASONS FOR DECISION

Section 22 – Deletion of Exempt or Irrelevant Material

14. Section 22 of the FOI Act provides that if the Department decides to refuse to give access to an exempt document, or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, then, where it is possible and reasonably practicable to prepare an edited copy of the document modified by deletions, then the Department must prepare and give you access to that edited copy.

15. I find that the following documents would disclose information that would reasonably be regarded as irrelevant to your request:

- a. documents number 1, 4, 5, 6, 9 and 12 in part contain personal identifying information that you agreed to exclude from your request, such as the names and contact details of non-SES departmental officers; and
- b. document number 2 in part contains information that is not in accordance with your request.

Section 42 – Exemption – Legal professional privilege

16. I have considered whether documents in accordance with your request are of such a nature that they would be privileged from production in legal proceedings on the ground of legal professional privilege. If so, the documents would be exempt under section 42 of the FOI Act.

17. Contention 1 claimed that documents number 10 and 11 are exempt from disclosure on this basis, and provided specific examples of the potential impact of disclosure.

18. I have examined the documents and find that documents number 1, 3, 9 and 13 in part and documents number 10 and 11 in full are documents containing material that would be privileged from production in legal proceedings on the ground of legal professional privilege.

19. As such, documents number 1, 3, 9 and 13 in part and documents number 10 and 11 in full are exempt from disclosure under the FOI Act.

Section 47C – Public interest conditional exemption – Deliberative processes

20. I have considered whether disclosure under the FOI Act of the documents in accordance with your request would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency. If so, the documents would be conditionally exempt documents under section 47C of the FOI Act.

21. The *FOI Guidelines* at paragraphs 6.52-6.88 provide guidance on the application of this conditional exemption.

22. I have examined the documents and find that document number 9 in part is a document containing opinion, advice and a recommendation prepared in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; namely, departmental involvement in Internet governance and domain name administration.

23. The *FOI Guidelines* at paragraphs 6.60 state that “the functions of an agency are usually found in the Administrative Arrangements Orders or the instrument or Act that established the agency”. In this case, Internet governance and domain name administration is within the meaning of the term “postal and telecommunications policies and programmes”, which is a matter dealt with by the Department of Communications and the Arts (see Administrative Arrangements Orders dated 1 September 2016, C2017Q00008).

24. I am therefore satisfied that the relevant part of document number 9 contains deliberative matter and is conditionally exempt under section 47C of the FOI Act.

Application of the public interest test

25. This conditional exemption requires application of the public interest test.

Public interest factors in favour of disclosure

26. Factors favouring access to the document in the public interest include whether access to the document would:

- a. promote the objects of the FOI Act (set out at section 3);
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure;
- d. allow a person to access his or her own personal information.

27. Applying these considerations to the relevant parts of document number 9:

- a. disclosure of this part of the document would promote the objects of the FOI Act, but only to a limited extent;
- b. disclosure of this part of the document would inform debate on a matter of public importance (Internet governance and domain name administration), but only to a limited extent;
- c. disclosure of this part of the document would not promote effective oversight of public expenditure, as it does not relate to public expenditure; and
- d. disclosure of this part of the document would not allow a person to access his or her own personal information, as it does not pertain to any personal information.

Public interest factors against disclosure

28. The *FOI Guidelines* at paragraph 6.22 set out a non-exhaustive list of factors against disclosure.

29. It is relevant that the deliberative material in question itself substantially consists of information that is otherwise conditionally exempt under section 47F and/or section 47G of the FOI Act.

30. I have taken into account the following public interest factors against disclosure:

- a. disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy without providing a right to correct the information or a right of response to the opinion;

- b. disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals to the extent that the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;
- c. disclosure could reasonably be expected to prejudice the Department's ability to obtain confidential information from the affected third party and generally;
- d. disclosure could reasonably be expected to prejudice the Department's ability to obtain similar information in future from the affected third party and generally; and
- e. disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals named in the document.

31. The *FOI Guidelines* at paragraphs 6.55-6.56 discuss the assessment of 'harm resulting from disclosure' in the context of the public interest factors. Disclosure of the relevant part of document number 9 would have similar harm to that outlined in my consideration of section 47F and section 47G.

Irrelevant factors

32. Subsection 11B(4) of the FOI Act sets out factors that I must not take into account in applying the public interest test to the above identified conditional exemptions.

33. I have not taken these irrelevant factors into account in making my decision.

Balancing public interest factors

34. There are limited public interest factors in favour of disclosure.

35. On the other hand, there are strong public interest factors against disclosure.

36. Weighing all factors, I find that on balance, disclosure of the relevant part of document number 9 would not be in the public interest and therefore that the material is exempt under section 47C of the FOI Act.

Section 47F – Public interest conditional exemption – Personal privacy

37. I have considered whether disclosure under the FOI Act of the documents in accordance with your request would involve the unreasonable disclosure of personal information about any person (including a deceased person). If so, the documents would be conditionally exempt documents under section 47F of the FOI Act.

38. The FOI Act at section 4 states that personal information has the same meaning as in the *Privacy Act 1988*. Section 6 of the Privacy Act states that personal information means 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.

39. Contention 1 claimed that all documents should be exempted on this basis “where there might be unreasonable disclosure of personal information”. However, Contention 1 did not provide any evidence to support this broad contention. Notwithstanding this, due to the nature of the information in the documents, I have considered the application of this conditional exemption to that information.

40. The *FOI Guidelines* at paragraphs 6.124-6.179 provide guidance on the application of this conditional exemption.

41. This conditional exemption has two threshold tests that must be satisfied.

42. First, there must be a disclosure of personal information about any person (including a deceased person).

43. I have examined the documents and find that documents number 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in part contain personal information. The information consists of both ‘information’ and ‘opinion’ within the meaning of the *Privacy Act 1988*, including names of people attending board meetings, information about their employment as board members, details of their opinions about board matters, and information and opinions held by people about other people. The personal information includes information that is in accordance with your request as well as information that is irrelevant material within the meaning of section 22.

44. Second, the disclosure of personal information must be unreasonable. The *FOI Guidelines* at paragraph 6.138 make it clear that this threshold test does not amount to the public interest test of subsection 11A(5), which follows later in the decision making process.

45. Subsection 47F(2) of the FOI Act sets out the matters to which an agency must have regard, and these are also referenced in subsection 27A(2) of the FOI Act and the *FOI Guidelines* at paragraphs 6.140-6.141.

46. These factors include:

- 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; and
- d. any other matters that the agency or Minister considers relevant.

47. Applying these considerations first to the ‘information’ about identified individuals:

- a. it is reasonable to assume that a limited amount of the information is well known (such as information that a person is a board member); however, the context in which the information appears may not be well known, and most of the remaining information would not be well known;

- b. there is no evidence that the people to whom the information relates are known to be (or to have been) associated with the matters dealt with in the documents in other than broad and general terms; and
- c. some of this information may be available from publicly accessible sources (such as names of people), but other information is not likely to be available from publicly accessible sources (such as contact details or information about their employment as board members).

48. Applying these considerations second to the 'opinion' about identified individuals:

- a. there is no evidence that the opinion is well known, and the context of the documents suggests that the opinion is not well known;
- b. there is no evidence to suggest that the person to whom the opinion information relates is known to be (or to have been) associated with the matters dealt with in the document; and
- c. there is no evidence to suggest that the opinion information is available from publicly accessible sources.

49. The *FOI Guidelines* at paragraph 6.139 quote the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 that "whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance".

50. Applying the *Chandra* considerations to these documents:

- a. it would be unreasonable to disclose information/opinion of the nature in question as this could reasonably be expected to prejudice the protection of an individual's right to privacy;
- b. the circumstances in which the information/opinion was obtained do not suggest that disclosure would be considered reasonable;
- c. it is likely that that the people concerned would not wish to have the information/opinion disclosed without consent, and this is confirmed by Contention 1; and
- d. the information has current relevance, as it dates to 2016, and noting the advice from the First Assistant Secretary Arts that a government review is underway.

51. Finally, the *FOI Guidelines* at paragraphs 6.142-6.148 provide 'key factors' and 'other factors' to which an agency may have regard in determining whether disclosure of a document would involve an unreasonable disclosure of personal information, including those arising from relevant jurisprudence.

52. Applying these 'key factors' and 'other factors':
- a. the documents contain third party personal information that it would be unreasonable to disclose;
 - b. the information has current relevance, as it dates to 2016, and noting the advice from the First Assistant Secretary Arts that a government review is underway;
 - c. disclosure of the information could cause detriment to the people to whom the information relates;
 - d. the Department collected the information in a context of confidentiality and not for the purposes of disclosure; and
 - e. disclosure of this personal information is of no demonstrable relevance to the affairs of government and is more likely "to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed" (following Heerey J in *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, cited in the *FOI Guidelines* at paragraph 6.144).

53. For the reasons outlined above, disclosure under the FOI Act of documents number 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in part would involve the unreasonable disclosure of personal information about a person.

54. I am therefore satisfied that documents number 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in part are conditionally exempt under section 47F of the FOI Act.

Application of the public interest test

55. This conditional exemption requires application of the public interest test.

Public interest factors in favour of disclosure

56. Factors favouring access to the document in the public interest include whether access to the document would:

- a. promote the objects of the FOI Act (set out at section 3);
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure; or
- d. allow a person to access his or her own personal information.

57. Applying these considerations to the relevant parts of the documents:

- a. disclosure of the personal information in these documents would not promote the objects of the FOI Act, but may undermine confidence in the operation of the conditional exemption provisions of the FOI Act;

- b. disclosure of the documents may inform debate on a matter of public importance, namely Internet governance and domain name administration, noting however that there is a review underway into the same matters;
- c. disclosure would not promote effective oversight of public expenditure, as the documents do not relate to public expenditure; and
- d. disclosure would not allow a person to access his or her own personal information, as the documents do not relate to the personal information of the applicant.

Public interest factors against disclosure

58. The *FOI Guidelines* at paragraph 6.22 set out a non-exhaustive list of factors against disclosure.

59. I have taken into account the following public interest factors against disclosure:

- a. disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy without providing a right to correct the information or a right of response to the opinion;
- b. disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals to the extent that the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;
- c. disclosure could reasonably be expected to prejudice the Department's ability to obtain confidential information from the affected third party and generally; and
- d. disclosure could reasonably be expected to prejudice the Department's ability to obtain similar information in future from the affected third party and generally.

Irrelevant factors

60. Subsection 11B(4) of the FOI Act sets out factors that I must not take into account in applying the public interest test to the above identified conditional exemptions.

61. I have not taken these irrelevant factors into account in making my decision.

Balancing public interest factors

62. There is a limited public interest factor in favour of disclosure.

63. On the other hand, there are strong public interest factors against disclosure.

64. Weighing all factors, I find that on balance, disclosure of documents number 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in part would not be in the public interest and therefore that the documents are exempt under section 47F of the FOI Act.

65. For documents number 1, 3, 4 (attachment), 6 (attachment), 7, 8 and 12 it appears from the context of the documents that a redacted version of these documents may have been

published by the document's originator. These published versions would have either published information, or would have redacted the same information as would be conditionally exempt from disclosure. As such, it would be unnecessary to prepare an edited version of these documents under section 22.

Section 47G – Public interest conditional exemption – Business

66. I have considered whether disclosure under the FOI Act of documents in accordance with your request would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking. If so, the documents may be conditionally exempt documents under section 47G of the FOI Act.

67. The *FOI Guidelines* at paragraphs 6.180-6.213 provide guidance on the application of this conditional exemption.

68. Contention 1 claimed that documents 1, 3, 10 and 11 are exempt from disclosure under section 47G on the basis that they “are internal and confidential...Board documents which, if released, would disclose business information including...commercial and financial affairs, in addition to...internal performance management processes. The release of this information would be adverse to the lawful business operations...as it would adversely impact on...future decision-making processes and would reasonably be expected to prejudice the future supply of information to the Commonwealth”.

69. Contention 1 further claimed that documents 2, 8 and 9 are also exempt from disclosure under section 47G on the basis that they “are internal and confidential communications between [the third party] and the Department and the release of these documents would reasonably be expected to prejudice the future supply of information to the Commonwealth”.

70. Contention 1 further claimed that documents 4, 5, 6, 7 and 10 are also exempt from disclosure under section 47G on the basis that they “confidential, internal Board documents which have been distributed to assist the Board with its decision making. The release of these documents would also prejudice the future supply of information to the Commonwealth and would unreasonably affect...future lawful business and decision-making process”.

71. I have examined the documents and find that documents number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 contain information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking.

72. This information is not business information about the applicant (subsection 47G(3)), and does not include trade secrets under section 47 (subsection 47G(2)).

Unreasonably adversely affect a person, organisation or undertaking

73. A document may be conditionally exempt under section 47G of the FOI Act in a case in which the disclosure of the information “would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs”.

74. Paragraph 6.186 of the *FOI Guidelines* states that the term ‘could reasonably be expected’ refers to an expectation that is based on reason, and that mere assertion or speculative possibility is not enough.

75. Contention 1 provided reasons why disclosure of certain documents would unreasonably adversely affect a person, organisation or undertaking. These are outlined above.

76. The *FOI Guidelines* at paragraph 6.191 state that “where disclosure would result in the release of facts already in the public domain, that disclosure would not amount to an unreasonable adverse effect on business affairs”.

77. While redacted versions of similar documents may have been published previously, the documents in accordance with your request have different provenance, and were provided without redaction directly to the Commonwealth for the purpose of the administration of matters administered by an agency; namely, Internet governance and domain name administration as a component of “postal and telecommunications policies and programmes”.

78. The *FOI Guidelines* at paragraph 6.192 state that the “use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs”, and contrast this with information about the internal affairs of an organisation including its governance processes.

79. I have examined documents number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and consider there is a rational basis to conclude that disclosure of these documents would have an adverse effect, and that effect would be unreasonable. Disclosure would result in the release of information not already in the public domain. Further, the documents relate to the business affairs of individuals and organisations named in the documents, and not merely to the internal affairs of the organisation and governance processes of those individuals and organisations.

80. Therefore, I find that disclosure under the FOI Act of documents number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 would, and could reasonably be expected to, unreasonably adversely affect a person, organisation or undertaking.

Prejudice the future supply of information

81. A document may be conditionally exempt under section 47G of the FOI Act in a case in which the disclosure of the information “could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency”.

82. The *FOI Guidelines* at paragraph 6.198 state that this limb of the conditional exemption comprises two parts.

83. First, there must be a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government.

84. Contention 1 provided reasons why disclosure of certain documents could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for

the purpose of the administration of matters administered by an agency. These are outlined above.

85. The *FOI Guidelines* at paragraph 6.200 state that no claim of prejudice can be made where the business information in question can be obtained compulsorily, or is required for some benefit or grant. In this case, there is no evidence that the affected third party is under a statutory or other legal obligation to provide the documents to the Commonwealth. Therefore, it is open to the affected third party to make a claim of prejudice.

86. Second, the reduction must prejudice the operations of the Department.

87. The *FOI Guidelines* at paragraph 6.201 state that “the agency will usually be best placed to identify, and be concerned about the circumstances where the disclosure of documents might reasonably be expected to prejudice the future supply of information to it”.

88. I have placed considerable weight on the advice of the First Assistant Secretary Arts that disclosure of the documents would prejudice the operations of the Department. In particular, the conduct of a current government review would be adversely affected by a reduction in the quantity or quality of business affairs information to the government.

89. I have examined documents number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and consider disclosure of these documents would prejudice the future supply of information to the Commonwealth.

90. I am therefore satisfied that documents number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are conditionally exempt under section 47G of the FOI Act.

Application of the public interest test

91. This conditional exemption requires application of the public interest test.

Public interest factors in favour of disclosure

92. Factors favouring access to the document in the public interest include whether access to the document would:

- a. promote the objects of the FOI Act (set out at section 3);
- b. inform debate on a matter of public importance;
- c. promote effective oversight of public expenditure;
- d. allow a person to access his or her own personal information.

93. I have taken into account the following public interest factors in favour of disclosure:

- a. disclosure of the business information in these documents would not promote the objects of the FOI Act, but may undermine confidence in the operation of the conditional exemption provisions of the FOI Act;

- b. disclosure of the documents may inform debate on a matter of public importance, namely Internet governance and domain name administration, noting however that there is a government review currently underway into the same matters;
- c. disclosure would not promote effective oversight of public expenditure, as the documents do not relate to public expenditure; and
- d. disclosure would not allow a person to access his or her own personal information, as the documents do not relate to the personal information of the applicant.

Public interest factors against disclosure

94. The *FOI Guidelines* at paragraph 6.22 set out a non-exhaustive list of factors against disclosure.

95. I have taken into account the following public interest factors against disclosure:

- a. disclosure could reasonably be expected to prejudice the Department's ability to obtain confidential information from the affected third party and generally;
- b. disclosure could reasonably be expected to prejudice the Department's ability to obtain similar information in future from the affected third party and generally;
- c. disclosure could reasonably be expected to prejudice the Department's ability to obtain information for a current government review into Internet governance and domain name administration; and
- d. disclosure could reasonably be expected to harm the interests of an individual or group of individuals named in the documents.

Irrelevant factors

96. Subsection 11B(4) of the FOI Act sets out factors that I must not take into account in applying the public interest test to the above identified conditional exemptions.

97. I have not taken these irrelevant factors into account in making my decision.

Balancing public interest factors

98. There is a limited public interest factor in favour of disclosure.

99. On the other hand, there are strong public interest factors against disclosure.

100. Weighing all factors, I find that on balance, disclosure would not be in the public interest and therefore that the documents are exempt under section 47G of the FOI Act.

101. For documents number 1, 3, 4 (attachment), 6 (attachment), 7, 8 and 12 it appears from the context of the documents that a redacted version of these documents may have been published by the document's originator. These published versions would have either published information, or would have redacted the same information as would be conditionally exempt

from disclosure. As such, it would be unnecessary to prepare an edited version of these documents under section 22.

F. CHARGE

102. The Australian Information Commissioner’s fact sheet 7 states that “if you paid a deposit and the agency decides not to grant you access to any document, you are not entitled to a refund of the deposit”.

G. REVIEW RIGHTS

103. This decision may be subject to review under section 54, section 54A, section 54L or section 54M of the FOI Act. I have attached the Office of the Australian Information Commissioner’s *FOI fact sheet 12: Your review rights*.

104. I have also directed that a copy of this decision, with your details redacted, is provided to the affected third party.

Yours sincerely

Legal Director
Office of the General Counsel
Position Number 112404

Attachment A Schedule of Documents

Attachment B FOI fact sheet 12: Your review rights