



6 February 2018

Mr Mike Read

Via email only: [foi+request-4231-ca4d9fa3@righttoknow.org.au](mailto:foi+request-4231-ca4d9fa3@righttoknow.org.au)

Dear Mr Read

### **Freedom of Information request 17-43**

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

### **Background to Decision**

On 4 December 2017 you requested access to the following:

*Copies of all documents created from February 1 2014 – July 31 2014 relating to the tenure and resignation of ASADA CEO Aurora Andruska, between ASADA and the Minister responsible for ASADA (at that time), together with copies of all advice & correspondence (both electronic and print) in preparing and finalising these documents.*

Your request was received on Monday 4 December 2017. An acknowledgment of your request was sent to you via email on 5 December 2017. That correspondence informed you that a decision was due to be made by Wednesday 3 January 2018.

On 20 December 2017, ASADA sought your agreement to extend the timeframe for the processing your request by fourteen (14) days, pursuant to section 15AA of the FOI Act. You agreed to this request on 20 December 2017, and a decision was due to be made by Wednesday 17 January 2018. However, following an extension of the processing time to allow for consultation with an affected third party the date by which a decision is to be provided to you is **Friday 16 February 2018**.

### **Authority and Materials Considered**

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

In reaching my decision I have taken into consideration:

- the relevant provisions of the FOI Act;
- relevant guidelines issued by the Office of the Australian Information Commissioner; and
- relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

### **Charges**

I have determined that it is not appropriate for charges to be considered in this matter as the calculation of those charges would have taken an equivalent time to the processing of the request.

### **Summary of Decision**

I have identified thirteen (13) documents as being within the scope of your request.

The documents are outlined at **Annexure A**. I have decided to grant you access in full to nine (9) of the documents and in part to the remaining four (4) documents. A copy of the exemption provisions relied on in reaching this decision are at **Annexure B**.

### **Reasons for Decision**

I have decided that Documents 1, 2, 3 and 4, and Documents 6 to 9 and 12 are to be released to you in full.

In respect of Documents 5, 10, 11 and 13, as outlined below, I am of the view that it is appropriate to apply an exemption in accordance with section 47F of the FOI Act to parts of those documents.

**Document 5** is internal correspondence between ASADA and the Department of Health regarding the draft Ministerial Announcement concerning ASADA CEO's Aurora Andruska's retirement. There is information contained on page 3 of the email correspondence that is personal information relating to leave undertaken by Ms Andruska which was unrelated to her time at ASADA that is conditionally exempt under section 47F of the FOI Act subject to the proper application of the public interest test.

**Documents 10, 11 and 13** are correspondence between the Minister's Office, ASADA and third parties (journalist/media requests) and includes personal information, such as contact details (address, telephone and/or email address) of the third parties that is conditionally exempt under section 47F of the FOI Act subject to the proper application of the public interest test.

### *The Public Interest Test*

Section 47F is a conditional exemption, meaning that it is subject to the application of the public interest test. The public interest test is required by section 11A(5) of the FOI Act. Section 11B(3) outlines several factors which should be considered as favouring access to conditionally exempt documents. These include to:

- promote the objects of the FOI Act;
- inform debate on matters of public importance;
- promote effective oversight of public expenditure; and
- allow a person access to his or her own personal information.

The FOI Act further outlines a number of factors which must not be taken into account in deciding whether on balance release of the documents would be contrary to the public interest. These are:

- access to the document could result in embarrassment to the Commonwealth Government or cause a loss of confidence in the Commonwealth Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- that the author of the document was (or is) of high seniority in the agency to which the request was made;
- access to the document could result in confusion or unnecessary debate.

There is no statutory provision outlining those factors which may weigh against release of a conditionally exempt document.

### *Personal Information – section 47F*

However, the Information Commissioner has provided Guidelines for the decision maker that recommend where the personal information has no relevance to the affairs of government disclosure would be unreasonable.

An additional factor against releasing the personal information in question is that release could unreasonably breach the privacy of an individual.

### *Conclusion*

The release of the redacted material would favour the promotion of the object of the FOI Act. However, given the information in question is irrelevant to the functioning of the government in the circumstances, greater weight is given to the fact that disclosure would unreasonably breach the privacy of individuals. Accordingly, on balance, the proper application of the public interest test favours maintaining the exemption.

It follows that I have decided that those parts of the documents that relate to personal information relating to Ms Andruska and the personal contact information of third parties are exempt under section 47F of the FOI Act as those factors against disclosure outweigh those in favour.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

#### *Internal review*

Under section 54 of the FOI Act, you may apply in writing to ASADA for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. If you wish to make such an application please contact [legal@asada.gov.au](mailto:legal@asada.gov.au). Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

#### *Information Commissioner Review*

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>

email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

### Questions about this decision

If you wish to discuss this decision, please contact the following officer:

Carolyn Maher

Lawyer

[legal@asada.gov.au](mailto:legal@asada.gov.au)

Yours sincerely



**Jane Annear**  
Acting National Manager Operations

## Schedule of Documents FOI 17-43

## ANNEXURE A

#	Date	No. of pages	Description	Release	Exemption
1.	Undated	3	Draft Ministerial Statement – ASADA CEO to Retire	Yes	N/A
2.	18/2/2014	1	Internal email regarding CEO job advertisement	Yes	N/A
3.	8/5/2014	2	Approval from Aurora Andruska regarding new CEO appointment	Yes	N/A
4.	17/2/2014	2	Approval from Aurora Andruska regarding Ministerial Statement	Yes	N/A
5.	17/2/2014	5	Emails between ASADA and Department of Health regarding draft wording for announcement of CEO retirement (including attachment)	In part	Section 47F
6.	17/2/2014	2	Approval from Aurora Andruska regarding Ministerial Statement	Yes	N/A
7.	18/2/2014	1	Email from ASADA to Minister's office requesting Ministerial statement	Yes	N/A
8.	20/2/2014	6	Internal email regarding website content for CEO retirement announcement (including attachment)	Yes	N/A
9.	12/3/2014	2	Email between ASADA and Department of Health regarding response to questions from Canberra Times	Yes	N/A
10.	10/4/2014	3	Email between ASADA and Department of Health regarding response to Channel Nine Melbourne (including attachment)	In part	Section 47F
11.	24/4/2014	2	Email between ASADA and Department of Health regarding response to Herald Sun (including attachment)	In part	Section 47F
12.	8/5/2014	1	Email from Aurora Andruska to Department of Health confirming resignation	Yes	N/A

22/5/2014	2	Email between ASADA and Department of Health regarding response to Herald Sun (including attachment)	In part	Section 47F
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## FREEDOM OF INFORMATION ACT 1982 - SECT 47F

### Public interest conditional exemptions–personal privacy

#### General rule

(1) 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).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (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.

(3) Subject to [subsection \(5\)](#), [subsection \(1\)](#) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

#### Access given to qualified person instead

(4) [Subsection \(5\)](#) applies if:

- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
- (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

- (a) carries on the same occupation, of a kind mentioned in the [definition](#) of *qualified person* in [subsection \(7\)](#), as the first-mentioned qualified person; and
- (b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in [section 23](#).

(7) In this section:

**"qualified person "** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see [section 11A](#)).