



18 January 2018

FOI ref: 2247

Nick Green

Sent by email: foi+request-4247-5b7229bc@righttoknow.org.au

Freedom of Information Request – Decision

Dear Mr Green,

I refer to your request received by the Department of the Treasury (the department) on 10 December 2017, for access under the *Freedom of Information Act 1982* (the Act) to the following:

Please provide the most recent regular internal report on performance of FOI function e.g. timeliness of responses, notable cases or whatever else that is regularly reported up to management about the FOI function in Treasury.

I am an authorised decision maker under section 23 of the Act.

Decision

I have identified one document held by the department that comes within the scope of your request. My decision is to exempt this document in part. Further information in relation to my decision is set out below.

Material Considered

The material to which I have had regard in making this decision includes:

- The terms of your request
- The documents within the scope of your request
- The relevant provisions of the Act
- Guidelines issued by the Australian Information Commissioner (the Guidelines)

Reasons for the Decision

I have decided to refuse access to the document within the scope of your request in accordance with the following provisions of the FOI Act.

Certain operations of agencies (section 47E)

Section 47E conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

In order for section 47E(d) to apply, the predicted effect must bear on the agency's 'proper and efficient' operations; that is, the agency is undertaking its expected activities in an expected manner.

The Freedom of Information (Charges) Regulations 1982 exist to enable FOI applicants to contribute to the cost of processing their FOI requests. While the charges levied to process FOI requests are not for the purposes of cost recovery, they contribute to consolidated revenue, which in turn reduces the impact of FOI costs on the taxpayer. FOI charges can only be levied when an agency is able to meet the deadlines accorded by the FOI Act.

In reviewing the document that you've requested access to, I consider that it contains significant information about the manner in which the department undertakes its FOI operations. If an FOI applicant wished to interfere with the department's ability to meet statutory deadlines, in order to avoid financially contributing to the cost of processing their FOI request, then I consider that the material in this report would allow them to do so.

If the material was disclosed, and FOI applicants became able to intentionally undermine the department's FOI processes, this would reduce the department's ability to contribute to consolidated revenue through collection of FOI charges. By extension, this would increase the department's burden on the taxpayer. In order to avoid this, the department would need to implement new and different processes for processing FOI requests which were resistant to being disrupted by FOI applicants. The process of determining and implementing such processes would be extremely resource intensive, which would itself increase the department's burden on the taxpayer for the purposes of administering the FOI Act.

The material in question relates to the dates of receipt and finalisation of FOI requests, the departmental areas and officers relevant to the requests, the FOI officers responsible for the requests, the scope of the requests, and the milestones in processing the requests (status). In the collective form, I consider that there is enough information in this document to enable a person to intentionally disrupt the department's FOI processes if they wished to do so. While some of this information could be disclosed in isolation, it's difficult to determine which of the elements would be most valuable to an individual who might seek to undermine the FOI process. I therefore consider it appropriate to exempt the material in total.

Accordingly, I have decided that the parts of the document which are listed as exempt in accordance with this provision meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test.

Public Interest

Section 11A(5) provides that an agency must give a person access to a conditionally exempt document unless access to the document would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- a) Disclosure would promote the objects of the FOI Act
- b) Disclosure would inform debate on a matter of public importance
- c) Disclosure would promote effective oversight of public expenditure
- d) Disclosure would allow a person to access his or her personal information

I agree that disclosure would promote the objects of the FOI Act. I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

I also considered the following factor which does not favour disclosure:

- a) Disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

The following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:

- a) Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government
- aa) Access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island
- b) Access to the document could result in any person misinterpreting or misunderstanding the document
- c) The author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made
- d) Access to the document could result in confusion or unnecessary debate

I am satisfied that no irrelevant factor has been considered.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Personal Privacy (section 47F)

Section 47F provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person. It also provides that, in determining whether the disclosure of the document would involve the unreasonable disclosure of such personal information, an agency must have regard to:

- The extent to which the information is well known
- 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
- The availability of the information from publicly accessible sources
- Any other matters that the agency considers relevant

Section 4 of the Act provides that the term 'personal information' has the same meaning that it has in the Privacy Act 1988, in which the term is defined to mean information or an opinion about an identified individual, or an individual who is reasonably identifiable.

The document that you requested access to contains the names of persons who have submitted FOI requests to the department.

The material in question is personal information for the purposes of section 47F. Given the highly personal nature of the information, I consider that its disclosure would be unreasonable. I have therefore decided that the material is conditionally exempt under section 47F.

Public Interest

I agree that disclosure would promote the objects of the FOI Act. I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

I also considered the following factor which does not favour disclosure:

- a) Disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy

I am satisfied that no irrelevant factor has been considered.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Rights of Review

A statement setting out your rights of review in this matter is attached.

Disclosure Log

The department publishes all documents disclosed in response to FOI requests (other than personal or business information that would be unreasonable to publish) on the Treasury website at the same time as the applicant receives the response. This is consistent with the arrangements established by section 11C of the Act.

Yours sincerely,



Shannon Kenna
Division Head
Communications and Parliamentary Division

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

The Secretary
The Treasury
Langton Crescent
PARKES ACT 2600
Attention: Parliamentary and Legal Services Unit

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.