



OFFICE OF SENATOR THE HON MITCH FIFIELD

DEPUTY LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR COMMUNICATIONS
MINISTER FOR THE ARTS

Mr Jackson Gothe-Snape
Right to Know

(via email: foi+request-4277-5a7c34e8@righttoknow.org.au)

2 February 2018

Dear Mr Gothe-Snape

Freedom of Information Request FOI 2018/001 – Notice of Access Decision

I refer to your email of 21 December 2017 requesting access to documents under section 15 of the *Freedom of Information Act 1982* (FOI Act).

The Minister for Communications has authorised me under section 23 of the FOI Act to make a decision on his behalf. I have made a decision on your request, and provide you with notice in writing of my decision.

A. BACKGROUND

1. Under section 15 of the FOI Act, by email directed to the Department of Communications and the Arts you requested access to:

“...the Minister of Communications’ diary for the period 11 September to 1 October 2017, in a ‘weekly agenda’ format.”

2. On 2 January 2018, under section 16(1) of the FOI Act, your request was transferred from the Department to my office for processing.

3. On 11 January 2018, you agreed, under section 15AA of the FOI Act, to an extension of the statutory processing period until 2 February 2018. Notice of your agreement to the extension of time was provided to Office of the Australian Information Commissioner on 17 January 2018.

4. The requested documents are listed in the Schedule of Documents at Attachment A.

B. DECISION

5. I have decided to give access (in part) to the documents you requested as follows:

- a. documents number 1, 2 and 3 are exempt, in part, under section 22 of the FOI Act, as they contain information that would reasonably be regarded as irrelevant to the

request, and I have decided to give access to an edited copy of those documents modified by deletions;

- b. documents number 1, 2 and 3 are exempt, in part, under section 47F of the FOI Act, and I have decided to give access to an edited copy of those documents modified by deletions.

6. I have further decided, under subsection 11C(1) of the FOI Act, that it is not unreasonable to publish the information contained in the documents to which I have given access.

C. MATERIAL ON WHICH MY DECISION IS BASED

7. I base my decision on the following material:

- a. your access request, dated 21 December 2017;
- b. the documents identified 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'); and
- e. relevant case law.

D. FINDINGS ON MATERIAL QUESTIONS OF FACT

8. I find that the requested documents, identified through generating diary pages in the requested weekly agenda format, are listed in the Schedule of Documents at Attachment A.

E. REASONS FOR DECISION

Section 22 – Deletion of Exempt or Irrelevant Material

9. Section 22 of the FOI Act provides that if a Minister 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 Minister must prepare and give you access to that edited copy.

10. I have decided to apply section 22 of the FOI Act to prepare and give you access to an edited copy of documents where relevant.

Section 47F – Public interest conditional exemption – Personal privacy

11. 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.

12. I find that documents number 1, 2 and 3 contain personal identifying information such as the names and contact details of ministerial staff, professional advisers, family members or constituents. The personal information includes information that is in accordance with your request as well as information that does not relate to the affairs of an agency and is irrelevant material under section 22.

13. I have considered whether disclosure under the FOI Act of the documents within the scope of your request would involve the unreasonable disclosure of personal information about any person (including a deceased person) and in that respect have had 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 available sources; and
- d. any other relevant matters.

14. Applying these considerations:

- a. 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;
- b. some of this information may be available from publicly available sources (such as names of persons) but other information is not likely to be available from publicly available sources (such as contact details or information relating to their employment).

15. I am therefore satisfied that documents 1, 2 and 3 are conditionally exempt (in part) under section 47F of the FOI Act.

Application of the public interest test

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

Public interest factors in favour of disclosure

17. 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.

18. 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 personal information would not information debate on a matter of public importance;
 - c. disclosure would not promote effective oversight of public expenditure; and
 - d. disclosure would not allow access to your own personal information.

Public interest factors against disclosure

19. Factors against disclosure in the public interest include but are not limited to the following:

- a. prejudice the protection of an individual's right to privacy;
- b. prejudice the fair treatment of individuals;
- c. prejudice security, law enforcement, public health or public safety;
- d. harm the interests of an individual or a group of individuals.

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

- a. disclosure of the information could reasonably be expected to prejudice the protection of the individual's right to privacy;
- b. disclosure of the information could reasonably be expected to prejudice the security, public health or public safety of individuals; and
- c. disclosure of the information could reasonably be expected to harm the interests of an individual or a group of individuals.

Irrelevant factors

21. 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.

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

Balancing public interest factors

23. Weighing all factors, I find that on balance, disclosure would not be in the public interest and therefore that the material is exempt under section 47F of the FOI Act.

F. INFORMATION PUBLICATION SCHEME

24. Under section 11C of the FOI Act, where a Minister gives access to a document under section 11A of the FOI Act, the Minister must publish that information within 10 working days. Please see www.oaic.gov.au for more information about the Information Publication Scheme.

G. REVIEW RIGHTS

25. This decision may be subject to review under 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*.

Yours faithfully

A handwritten signature in black ink, appearing to be 'LUKE TOBIN', written over a horizontal line.

LUKE TOBIN
Adviser

Attachment 1 Schedule of Documents

Attachment 2 *FOI fact sheet 12: Your review rights*