

Mr Phil Richards

**By email: [foi+request-4614-53e1ba58@righttoknow.org.au](mailto:foi+request-4614-53e1ba58@righttoknow.org.au)**

Office of General Counsel  
GPO Box 367  
CANBERRA CITY ACT 2601  
[www.airservicesaustralia.com](http://www.airservicesaustralia.com)

ABN 59 698 720 886

Dear Mr Richards

## **Your Freedom of Information Request – Notice of Decision on Access**

I refer to your email dated 4 June 2018 in which you requested access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to:

1. *All documents showing concerns, issues, non compliance, complaints around the sleeping arrangements at the ARFF Canberra station. (including photos). Documents showing bedding on floors in non bedroom areas.*
2. *Any correspondence from and to the UFUA (Aviation Branch) around the sleeping arrangements around the concerns or issues with it.*

## **Decision**

Airservices Australia (**Airservices**) has identified 19 documents, consisting of 42 pages, as falling within the scope of your FOI request. These documents, and my decision in relation to each document, are set out in the schedule of documents at **Attachment A (the Schedule)**.

I have decided to:

- grant you full access to 3 documents;
- grant you partial access to 13 documents;
- refuse access to 3 documents.

I have found that certain documents, as identified in the Schedule, contain material which is:

- exempt under section 47 (commercially valuable information) of the FOI Act; and/or
- conditionally exempt under section 47C (deliberative processes) and section 47F (personal privacy) of the FOI Act, and disclosure of that information would be contrary to the public interest.

Where possible, exempt material has been deleted, so that the residual parts of the documents can be released to you.

## **Reasons for decision**

The reasons for my decision are set out in the Statement of Reasons at **Attachment B**.

## **Outstanding charges**

Airservices has advised you that the charge for processing your request was \$35.97. We cannot release the documents to you until you pay the charge.


## **Review rights and complaints**

If you are unhappy with my decision, information about your rights of review, and how you can make a complaint about the handling of your request, is at **Attachment C**.

## **Contact**

If you wish to discuss my decision, please contact the legal team via email  
[legal@airservicesaustralia.com](mailto:legal@airservicesaustralia.com).

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'L' followed by a horizontal line and a cursive 'K'.

Leah Kennedy  
Authorised FOI Decision Maker

**FOI Request: FOI35-0518 – Canberra bedding  
FOI Decision  
SCHEDULE OF DOCUMENTS**

Doc No.	No. of Pages	Date	Description	Decision	Exemption
1.	1	4 December 2017	Email regarding Canberra FS Accommodation options	Release in part	S47F (personal privacy) S22 (irrelevant to request / outside scope) <u>P.1.</u>
1.1	4	4 December 2017	Memo: Short term temporary accommodation at Canberra Fire Station	Release in part	S47F (personal privacy) s 22 (irrelevant) <u>P.1, 4.</u> S47C (deliberative) s 22 (irrelevant) <u>P.1, 2, 3.</u> S47 (commercially valuable information) <u>P.2, 3.</u>
2.	1	N.D.	Email regarding CB Fire Station upgrade and Temporary sleeping accommodation	Release in part	S47F (personal privacy) S22 (irrelevant to request / outside scope) <u>P.1.</u>
3.	2	22 February 2018	Email regarding EGM APPROVED: Canberra ARFFS Temporary Accommodation and Sale of Caravans	Release in part	S47F (personal privacy) S22 (irrelevant to request / outside scope) <u>P.1, 2.</u>

Doc No.	No. of Pages	Date	Description	Decision	Exemption
4.	2	5 September 2016	Email regarding Application for Temporary Sleeping Accommodation	Release in part	S47F (personal privacy) S22 (irrelevant to request / outside scope) <u>P.1, 2.</u>
4.1	1	N.D.	Dorm Tech Drawings	Release in full	N/A
4.2	1	N.D.	Dorm Tech Drawings	Release in full	N/A
4.3	4	N.D.	Attachment - Application for Building Permit	Exempt in full	S22 (irrelevant to request / outside scope)
4.4	4	N.D.	Application for Works Permit	Exempt in full	S22 (irrelevant to request / outside scope)
4.5	1	1 September 2016	ARFF Canberra Layout for Temporary Sleeping Accommodation	Release in full	N/A
5.	3	21 December 2016	Email regarding Canberra accommodation options	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1, 2.</u> S47 (trade secrets or commercially valuable information) <u>P.1.</u> S22 (irrelevant to request / outside scope) <u>P.1.</u>

Doc No.	No.of Pages	Date	Description	Decision	Exemption
6.	3	15 February 2017	Email regarding Canberra Roster and Dormitory Discussion Points	Release in part	S47 (commercially valuable information); <u>P.1.</u> S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1, 2.</u> S22 (irrelevant to request / outside scope) <u>P.1, 2.</u>
7.	1	15 December 2017	Email regarding Discussions Airsterices and CAG re dormitories	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1-2.</u>
8.	3	22 February 2018	Memo regarding Purchase of temporary accommodation units for Canberra and sale of caravans	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1, 2.</u> S47F (trade secrets or commercially valuable information) <u>P.1, 2.</u> S22 (irrelevant to request / outside scope) <u>P.2.</u>
9.	2	21 October 2017	Email regarding Canberra GFA	Exempt in full	S47F (personal privacy) S22 (irrelevant to request / outside scope)

Doc No.	No. of Pages	Date	Description	Decision	Exemption
10.	5	19 March 2018	Email regarding Canberra Upgrade	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1-5.</u> S22 (irrelevant to request / outside scope) <u>P.3.</u> S42 (legal professional privilege) <u>P.3, 4.</u>
11.	1	20 February 2018	Email regarding Temporary Accommodation Building - ARFFS Fire Station Canberra Airport	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1.</u>
12.	1	6 October 2017	Email regarding Senate Est Canberra Brief	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1.</u>
12.1	2	6 October 2017	Document regarding Canberra Fire Station accommodation and roster, Senate Estimates Month 2017	Release in part	S47F (personal privacy) / S22 (irrelevant to request / outside scope) <u>P.1.</u> S47 (trade secrets or commercially valuable information) <u>P.1,2.</u> S22 (irrelevant to request / outside scope) <u>P.1,2.</u>





FOI Request: FOI35-0518

FOI Decision  
STATEMENT OF REASONS

YOUR FOI REQUEST

On 4 June 2018, you requested access to the following documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

1. *All documents showing concerns, issues, non compliance, complaints around the sleeping arrangements at the ARFF Canberra station. (including photos). Documents showing bedding on floors in non bedroom areas.*
2. *Any correspondence from and to the UFUA (Aviation Branch) around the sleeping arrangements around the concerns or issues with it.*

DECISION MAKER

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

My decision and reasons for decision are set out below.

DECISION

In relation to the [insert number] documents relating your request (identified in the Schedule at **Attachment A**), I have decided to:

- grant you full access to 3 documents;
- grant you partial access to 13 documents;
- refuse access to 3 documents.

I have found that either the whole or parts of the documents, as identified in the Schedule, contain material which is

- exempt under section 47 (commercially valuable information) of the FOI Act; and/or
- conditionally exempt under section 47C (deliberative processes) and section 47F (personal privacy) of the FOI Act, and disclosure of that information would be contrary to the public interest.

Also, I have found information that could potentially be conditionally exempt under section 47E (certain operations of agencies), but I have decided, on balance, not to apply that conditional exemption in this instance.

DELETION OF EXEMPT OR IRRELEVANT MATERIAL

Section 22 of the FOI Act provides that if an agency decides that granting access to a document would disclose information that would be exempt or irrelevant to the request, then where it is reasonably practicable to do so, a copy of the document with deletions to exempt or irrelevant information should be provided.

For the reasons discussed below, I have found that certain documents contain exempt material.

In addition, certain documents (identified in the Schedule) contain information which falls outside the scope of your FOI request.



In accordance with section 22 of the FOI Act, I have deleted the exempt and irrelevant material wherever possible to facilitate the release of the remainder of the documents to you.

## **MATERIAL ON WHICH MY FINDINGS ARE BASED**

In reaching my decision, I have relied on the following material:

- the terms of your FOI request;
- consultations with Airservices officers about the nature of the requested documents, Airservices' operating environment and functions (including normal business and record-keeping practices) and searches that have been undertaken;
- the FOI Act;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

## **REASONS FOR DECISION**

### ***Section 47 exemption – Documents disclosing trade secrets or commercially valuable information***

Section 47 of the FOI Act relevantly provides:

- (1) *A document is an exempt document if its disclosure under this Act would disclose:*
- (a) *trade secrets; or*
  - (b) *any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.*

The following factors (as set out in the FOI Guidelines) are relevant in determining whether information has commercial value:

- whether the information is known only to the relevant agency, business or person, or if it is known by others, the extent to which that fact detracts from the intrinsic commercial value of the information;
- whether the information confers a competitive advantage on an agency, business or person;
- whether a genuine 'arms'-length' buyer would be prepared to pay to obtain that information;
- whether the information is current or out of date;
- whether disclosing the information would reduce the value of a business operation or commercial activity.

A number of documents contain information regarding the procurement processes for obtaining temporary accommodation. In addition to this information being irrelevant to the request, the information is also of commercial value. Information provided by bidders – including quotes – could be valuable to competitors, if made known. Insider information about the way Airservices came to its decision on the procurement process is also of commercial value, as it could give an unfair advantage to future bidders, if released.

I am satisfied that the information in the documents comprise information having a commercial value which would be destroyed or diminished if disclosed. Accordingly, I find that the parts of documents identified in the Schedule contain material which is exempt from disclosure under section 47 of the FOI Act.

### ***Section 47C – Public interest conditional exemption – Deliberative processes***

Section 47C relevantly provides:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative 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:*

*(a) an agency.*

The documents relevantly identified in the Schedule include information regarding the procurement processes for obtaining temporary accommodation.

I am satisfied that these documents contain deliberative matter in the nature of opinions, advice or recommendations that were obtained or prepared, or consultation or deliberation that took place, for the purposes of making procurement decisions.

I therefore find that the relevant documents identified in the Schedule are conditionally exempt under section 47C of the FOI Act.

### **Section 47F – Public interest conditional exemption – Personal privacy**

Section 47F of the FOI Act relevantly provides:

- (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 available sources;*
  - (d) any other matters that the agency or Minister considers relevant.*

'Personal information' is defined in section 4 of the FOI Act as '*information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

Certain documents (as identified in the Schedule) contain personal information about individuals other than yourself. This information includes names, telephone numbers, email address and other information of a personal nature.

I am satisfied that disclosure of this information would be unreasonable, on the basis that the personal information is not publicly available or well-known, and release may cause concern to a number of the affected individuals.

I therefore find that the relevant personal information is conditionally exempt under section 47F(1) of the FOI Act.

### **Section 47E – Public interest conditional exemption – Certain operations of agencies**

Section 47E of the FOI Act provides:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to:*

...

- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

One document (identified in the Schedule) is a brief prepared for Senate Estimates. I am mindful that if it were known that briefs containing deliberative or other sensitive matter were to be released publicly it may be that this would have an inhibiting effect on the content and style of future briefs such that they may not be as frank and candid as they might otherwise be. Given this, I have considered whether any exemptions may apply, including the possible application of section 47E of the FOI Act.

Having closely examined the content of the Senate Estimate Brief, I do not consider that there would be a 'substantial' adverse effect on Airservices operations, if the brief were released. Accordingly, I am satisfied that the exemption in section 47E does *not* apply to that document.

### **Conditional exemptions – Public interest test**

Section 11A(5) of the FOI Act requires access to a conditionally exempt document to be granted unless (in the circumstances) access to the document at that particular time would, on balance, be contrary to the public interest.

For the reasons discussed above, I have found that certain documents contain information which is conditionally exempt under sections 47F (personal privacy) and 47C (deliberative processes).

In applying the public interest test, I am required to have regard to the FOI Guidelines and the following factors listed in section 11B(3) of the FOI Act, which relate to whether the granting of access would:

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

The following irrelevant factors (set out in subsection 11B(4)) must not be taken into account in deciding whether access would be contrary to the public interest:

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

In this case, I accept the following public interest factors favour disclosure:

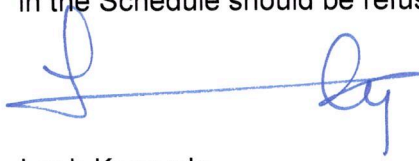
- promote the objects of the FOI Act.

However, I consider that these factors are outweighed by the following public interest factors against disclosure:

- prejudice to the protection of another individual's right to privacy;
- prejudice to Airservices' ability to obtain similar information in the future;
- prejudice to an agency's competitive commercial activities;
- the adverse impact that disclosure would have on the willingness of staff to consult with others and/or engage in frank discussions, which in turn could have an adverse effect on the quality of decision making in the future.

In the circumstances, I am satisfied that disclosure of the documents would, on balance, be contrary to the public interest.

I therefore find that access to the conditionally exempt documents (or parts of documents) identified in the Schedule should be refused.

A handwritten signature in blue ink, appearing to read 'Leah Kennedy', written over a horizontal line.

Leah Kennedy  
Authorised FOI Decision Maker

3 July 2018

## INFORMATION ON REVIEW RIGHTS

The *Freedom of Information Act 1982* (**the FOI Act**) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (a) an internal review officer in Airservices Australia; or
- (b) the Australian Information Commissioner (**Information Commissioner**).

### Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- (c) made in writing;
- (d) made within 30 days of receiving this letter; and
- (e) sent to [legal@airservicesaustralia.com](mailto:legal@airservicesaustralia.com).

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

### Information Commissioner review

If you want to seek direct review by the Information Commissioner (and not internal review), you must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

<p>Online: <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>  Post: GPO Box 2999, Canberra ACT 2601  Fax: +61 2 9284 9666  Email: <a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a></p>	<p>In person:  Level 3,  175 Pitt Street,  Sydney NSW 2000</p>
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An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

### Complaints to the Commonwealth Ombudsman and Information Commissioner



### ***Commonwealth Ombudsman***

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072  
Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.

### ***Information Commissioner***

You may also complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992  
Website: [www.oaic.gov.au](http://www.oaic.gov.au)