

Our ref: FOI-2018-50082

21 June 2018

Phillip Sweeney  
via email: [foi+request-4616-999a8e08@righttoknow.org.au](mailto:foi+request-4616-999a8e08@righttoknow.org.au)

Dear Mr Sweeney

**Your Freedom of Information (FOI) request dated 31 May 2018**

I refer to your email dated 31 May 2018 received by the Ombudsman's Office in which you sought access to documents under the *Freedom of Information Act 1982* (the FOI Act). Your request was framed in the following way:

*...copies of all correspondence between the Joint Committee [Joint Parliamentary Committee on Corporations and Financial Services] and the Commonwealth Ombudsman including covering letters and emails plus attached documents related to this complaint to the Commonwealth Ombudsman. Correspondence between ASIC and the Commonwealth Ombudsman provided to the 'Joint Committees' is also included in this FOI Request...*

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our Office under s 23 of the FOI Act.

**Decision**

Our Office identified eight documents relevant to your request. I have decided to grant you full access to five of these documents, and to provide you with partial access to the remaining three. My reasons for this decision are set out at **Attachment A** to this letter.

**Attachment B** contains a schedule setting out the relevant documents. Our Office identified the documents by searching through our electronic case management system.

**Review rights**

***Internal review***

Under s 54 of the FOI Act, you may apply in writing to our Office for an internal review of my decision. The internal review application must be made within 30 days of the date on which you were notified of my decision.

Where possible, please attach reasons for why you believe review of the decision is necessary. The internal review will be carried out by another Ombudsman officer within 30 days.

***Review by the Australian Information Commissioner***

Under s 54L of the FOI Act, you may apply to the 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 at <https://forms.australia.gov.au/forms/oaic/foi-review/>
- via email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
- by overland mail to GPO Box 5218, SYDNEY NSW 2001
- in person to Level 2, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

### **Complaints to the Information Commissioner**

You may complain to the Information Commissioner about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint to the Information Commissioner, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way in which your request was processed. It should also identify the Ombudsman's office as the agency about which you are complaining.

You may lodge your complaint either

- online at [www.oaic.gov.au](http://www.oaic.gov.au);
- by overland mail to GPO Box 5218, SYDNEY NSW 2001, or
- by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).

### **Contacts**

If you require clarification of any of the matters discussed in this letter you should contact me using the contact information set out at the foot of the first page of this letter.

Yours sincerely

Jessica Phillips  
Legal Officer  
Commonwealth Ombudsman

## **ATTACHMENT A – Reasons for decision**

### **Material taken into account**

In making my decision I had regard to the following:

- the terms of your request
- the content of the documents to which you sought access
- the Australian Information Commissioner's Guidelines on FOI, available at [www.oaic.gov.au](http://www.oaic.gov.au) (the Guidelines) and
- relevant provisions of the FOI Act.

### **Findings of fact and reasons for decision**

Where the schedule of documents at Attachment B indicates that an exemption has been applied to a document, or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document, or part of that document, are set out below.

#### **Public interest conditional exemption – certain agency operations: section 47E(c)**

I have exempted from release the direct email addresses and telephone numbers of our staff where they appear in the documents falling within the scope of the request. These exemptions are made on the basis that the section 47E conditional exemption applies to the information and release would be contrary to the public interest.

Section 47E relevantly provides:

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

- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency.*

To provide some context, the day to day work of the Ombudsman involves dealing with complaints from members of the public about public administration in Australian Government agencies, state postal operators, private health insurance companies and private tertiary education providers. It is common for complainants to be experiencing stressful personal and financial circumstances, including crisis situations where heightened emotions may lead to impulsive behaviour. Our staff also frequently come into contact with individuals who, for a variety of reasons (whether intentional or not) engage in persistent, threatening and confrontational behaviour.

As the Ombudsman receives complaints from a substantial number of individuals who engage in unreasonable behaviour towards office staff, among other reasons, the Ombudsman has established an Intake, Assessment and Early Resolution Team which is responsible for our centralised telephone switchboard and general email address to manage the receipt of contact between our investigation officers and members of the public. We note in this context, that other agencies which deliver services to the general public have also established similar arrangements for management of their contact with the public.

It is our experience that, once released, the personal contact information of our staff is often misused, or is used in a manner that represents a substantial diversion of our staff away from the performance of their normal duties. We have identified numerous instances of complainants publishing offensive and unreasonable material about our staff on the Internet. For this reason, it is our view that disclosure could reasonably be expected to have a substantial adverse effect on the management of our personnel (in the broader sense as set out in paragraph 6.105 of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act), and that this would be contrary to the public interest.

***Reasonably be expected to have a substantial adverse effect on the management of personnel***

In the 2016-2017 financial year, the Ombudsman's office received 41,301 approaches from members of the public. Of these, we made comments or suggestions to agencies in relation to 175 complaints where we considered that shortcomings had been identified, or there was scope for agencies to improve their administrative practices. We declined to investigate 15,460 complaints, and we decided to cease investigation of 2856 complaints, either because a remedy had been achieved during the course of the investigation, or because further investigation would not achieve a better or different outcome for the complainant. As the statistics show, in over half of the approaches we receive, our investigation officers are required to deliver 'bad news' to complainants because we cannot assist them further.

Approximately 60 officers investigate complaints from the public. While requests for information and referral inquiries are generally handled by the office's Intake, Assessment and Early Resolution Team, the remaining approaches, when allocated to our investigation officers, represents a high volume workload for each investigation officer of up to 250 complaints per year.

Part of the role of our investigation officers is to communicate with complainants about the outcome of our deliberations on the circumstances of their complaint. Where the outcome of our deliberations does not result in a different or better outcome for the complainant, we experience a high number of complainants seeking to contact our investigation officers, with a substantial number doing so repeatedly, even after their complaints have been closed, and they have been advised that the Ombudsman is not able to assist them further. Under current arrangements, these calls are initially received and managed by our office's Intake, Assessment and Early Resolution Team using our publicly available contact information.

For these reasons, the management of contact to this office through our Intake, Assessment and Early Resolution Team is an important part of the arrangements established by this office to enable our investigation officers to carry out their work efficiently and prepare themselves for challenging and difficult conversations with complainants.

If the direct telephone numbers and email addresses of our investigation officers were released to the world at large (or at least being made widely known), that information could be published electronically on publicly available media platforms, and therefore easily accessible by those wishing to search for it. This would undermine the purpose of establishing an Intake, Assessment and Early Resolution Team by providing the opportunity for persistent complainants to directly contact our investigation officers by telephone and email, repeatedly, which has a substantial impact, as it results in a diversion of resources away from performance of normal duties at the very least, and at worst results in conduct of a harassing, and sometimes threatening nature.

### ***Workplace health and safety***

Usually, complainants contacting this office have already had an unsatisfactory experience with a service provided by another government agency, postal operator, private health insurer or private tertiary education provider. It is not uncommon for complainants to transfer to our staff their dissatisfaction with the agency about which they are complaining, or to be unable to accept the outcome of our finalisation of their complaint. Often this behaviour occurs over a sustained period of time for several months after a complaint has been closed. Under these circumstances, direct contact by complainants to our officers can represent a workplace health and safety risk by way of frequent, unannounced, unreasonable, harassing conduct directed at our investigation officers. The impact of this would be intense where the officer is subjected to this type of conduct on a repeated basis over a short period of time, and the contact could be from more than one complainant over the period. This office has, on occasion, needed to inform the Police of telephone and written threats to members of our staff. For these reasons, the release of direct telephone and email contact details for our staff has the potential to result in adverse health and safety outcomes for our investigation officers.

### ***Contrary to the public interest***

We consider that the release of the direct telephone numbers and email addresses of our staff would, on balance, be contrary to the public interest.

Release of our officers' direct telephone numbers and email addresses would not inform debate on any matter or promote oversight of public expenditure, and the deleted material is not your own personal information. None of the irrelevant factors set out in s 11B of the FOI Act are reflected in our reasons for seeking to exempt the direct telephone numbers of our staff from release.

In our view, release of our officers' direct telephone numbers and email addresses would result in inefficiencies within this Office, due in part to increased costs of addressing workplace health and safety issues and concerns. Release of the relevant information may result in psychological harm to our staff, and an increase in unplanned absences of officers, further indicating that release of the information is not in the public interest.

### **Public interest conditional exemption – personal privacy: section 47F**

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.

Section 11A of the FOI Act provides that while an agency must give a person access to a document if it is conditionally exempt, access may be refused if the document's disclosure would, on balance, be contrary to the public interest.

### ***Personal information***

'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.*

The elements of personal information are:

1. it relates only to a natural person (e.g. not a company)
2. it says something about the individual

3. it may be in the form of an opinion, it may be true or untrue, and it may form part of a database, and
4. the individual's identity is known or is reasonably ascertainable using the information in the document.

The documents you have requested contain personal information relating to the names of certain members of staff in this Office, and the names and position descriptions of certain staff of the Joint Parliamentary Committee on Corporations and Financial Services.

***Disclosure unreasonable***

If information is personal information, it will be conditionally exempt if its disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, subsection 47F(2) of the FOI Act requires me to take into account:

1. the extent to which the information is well known
2. 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
3. the availability of the information from publicly accessible sources, and
4. any other matter I consider relevant.

I have concluded that the relevant Ombudsman staff members' names and the names and position descriptions of certain staff of the Joint Parliamentary Committee on Corporations and Financial Services is personal information under the definition set out in s 4 of the FOI Act. I am satisfied this is information which relates to particular persons employed by our Office and the Committee; it is specific to the relevant individuals and the identity of the particular individuals could be ascertained using the information.

In my view, it is reasonable to expect disclosure of staff members' names and position descriptions could subject staff to the possibility of threats, harassment or inappropriate contact from unauthorised misuse of the relevant information. This, in turn, could reasonably be expected to have a substantial adverse effect on the relevant staff and to the management of those staff members within this Office and the Committee.

For the reasons set out in this decision, I have formed the view that this information is conditionally exempt under s 47F(1) of the FOI Act. In my view, release of such information would involve the unreasonable disclosure of personal information.

***Disclosure not in the public interest***

In deciding whether or not access should be given to this information on the basis of public interest I have taken a number of matters into account. These matters include the public interest factors for and against disclosure as outlined in the Guidelines, as well as matters specific to our agency's functions and operating environment.

In my opinion, the public interest is best served by withholding this information on the ground that:

- Release of the relevant information could reasonably be expected to prejudice the protection of a person's right to privacy.
- Disclosure of the relevant material could reasonably be expected to result in certain inefficiencies in this Office and the Committee.

In addition, I am satisfied that disclosure of the relevant information would not achieve any of the following outcomes provided for by the FOI Act:

- promote the objects of the FOI Act
- inform debate on a matter of public importance
- promote effective oversight of public expenditure, or
- allow you access to your own personal information.

Pursuant to subsection 11A(5) of the FOI Act, I have concluded the relevant material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

**Deletion of exempt or irrelevant matter: section 22**

Section 22 of the FOI Act allows an agency to delete exempt or irrelevant matter from a document which is otherwise relevant to an applicant's FOI request, and to provide an applicant with access to an edited copy.

As I have found that parts of documents relevant to your request contain information which is conditionally exempt, I have redacted that information accordingly. You are provided with access to appropriately edited versions of those documents.

**ATTACHMENT B – Schedule of relevant documents**

		<b>Schedule of documents for: Phillip Sweeney</b>		
		<b>Ombudsman's reference: FOI-2018-50082</b>		
<b>File</b>	<b>Item no.</b>	<b>Description</b>	<b>Date</b>	<b>Decision</b>
<b>2018-400020</b>	<b>1</b>	Email from Committee with request to Ombudsman and subsequent email from Ombudsman enclosing response	12/02/18 22/02/18	Deletions s 47F
	<b>2</b>	Response from the Ombudsman to the Committee	22/02/18	Disclosed under FOI
	<b>3</b>	Email from Committee to Ombudsman enclosing further request	11/04/18	Deletions s 47F
	<b>4</b>	Request from Committee to Ombudsman	11/04/18	Disclosed under FOI
	<b>5</b>	Email from Ombudsman to Committee enclosing further response	02/05/18	Deletions s 47F
	<b>6</b>	Further response from the Ombudsman to Committee	30/04/18	Disclosed under FOI
	<b>7</b>	Attachment to Ombudsman's further response to Committee: <ul style="list-style-type: none"> <li>Ombudsman decision letter to Mr Sweeney following completion of investigation.</li> </ul>	04/08/11	Disclosed under FOI
	<b>8</b>	Attachment to Ombudsman's further response to Committee: <ul style="list-style-type: none"> <li>Ombudsman decision letter to Mr Sweeney following review of investigation. Redacted version was provided to Committee.</li> </ul>	19/12/11	Disclosed under FOI



## ATTACHMENT C – Relevant FOI Act provisions

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

#### *Exemptions and conditional exemptions*

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

## 11B Public interest exemptions—factors

### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (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.

### *Irrelevant factors*

- (4) 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 of 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 document 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.

### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## 22 Access to edited copies with exempt or irrelevant matter deleted

### *Scope*

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:

- (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
- (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
  - (i) the nature and extent of the modification; and
  - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

*Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

*Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

**47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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

#### **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.