



Sensitive: Personal

DB

By email: foi+request-4637-d50ca902@righttoknow.org.au

Dear DB

I refer to your request dated 9 June 2018 for access to documents under the *Freedom of Information Act 1982 (FOI Act)*.

You sought access to copies of email correspondence between 14 May 2018 to 9 June 2018, the date of your application, between acting Merit Protection Commissioner, Mr Mark Davidson and the Public Service Commissioner, Mr John Lloyd.

The statutory time period for providing you with a decision on your request expired on 10 July 2018. You were advised on 25 June 2018 that the time period was extended by an additional 30 days under s 15(6) of the FOI Act to allow for consultation of a third party. Accordingly, the due date for you to receive a decision on your request is 10 August 2018.

I am authorised under s 23 of the FOI Act to make this decision.

In making my decision, I have taken into account:

- The terms of your request
- The response from a third party consulted about your request
- The documents identified as relevant to the scope of your request
- The FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act: <http://www.oaic.gov.au/>

Summary of my decision

I have identified 22 documents that are relevant to the scope of your request. I have decided to release 14 documents in full and release 8 documents in part. Attached to my decision is a schedule of documents that lists each document and my decision in relation to each document.

Reasons for decision

Irrelevant information – s 22

Section 22 permits redact of information that is irrelevant to the scope of the request. You agreed to exclude from the scope of your request the names of third parties who are not public servants or members of Parliament. I have redacted under s 22 names of third parties whose names appear in the documents as private individuals.



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Personal information

Section 47F conditionally exempts a document to the extent that its disclosure would or could involve the unreasonable disclosure of personal information about any person. Personal information has the same meaning as in the *Privacy Act 1988*, in which it is relevantly defined as information or opinion about an identified individual or an individual who is reasonably identifiable.

I am satisfied that the documents contain information that says something about identifiable individuals and is personal information for the purposes of s 47F.

Factors that are relevant in deciding if disclosure of personal would be unreasonable are outlined in s 47F(2) and also were described in '*FG' and National Archives of Australia [2015] AICmr 26*. They include:

- the nature, age and current relevance of the information
- whether the information is well known or available from other public sources
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- whether disclosure of the information might advance the public interest in government transparency and integrity
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have considered the extent to which information contained in the documents is well known or available from other public sources. I have decided to release documents, or parts of documents, that contain information that is in the public domain.

Information in documents 7, 8, 14 and 15 is of a private, sensitive nature that is not relevant to the issues under consideration contained in the documents. The information is not well known or in the public domain and, if disclosed, would likely cause that person distress. I find that disclosure of the personal information would be unreasonable.

Information in documents 3, 4, 5 and 6 contain information that would identify a third party who made a complaint and an FOI request. The identity of that person is not well known or in the public domain. I find that person who have a reasonable expectation that their identity would not be made publically available and disclosure would be unreasonable in these circumstances.

I must give access to the documents I have found to be conditionally exempt unless, in the circumstances, access to the documents at this time would, on balance, be contrary to the public interest. Whether the giving of access would be contrary to the public interest requires me to consider and weigh factors for and against disclosure.

I acknowledge that the giving of access to information held by a Government agency would promote the objects of the FOI Act and increase public scrutiny and accountability of the activities of the agency. However, the information in this case is of a private, sensitive nature provided on a confidential basis. The information would not contribute to public debate on a matter of public importance or enhance transparency or accountability of Government activities. Disclosure would, on the other hand reasonably be expected to prejudice the protection of an individual's right to privacy.

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On balance, I find disclosure would be contrary to the public interest and the information is exempt under s 47F.

Third party review rights

Even though my decision is to release the majority of documents, I cannot give you access to the documents until the review rights of a third party who objected to disclosure run out. The third party has 30 days to seek either internal review or review by the Information Commissioner of my decision. I will notify you if an application for review is made.

Review Rights

If you are dissatisfied with this decision you can apply for internal review by this agency (Option 1 below) or external review by the Australian Information Commissioner (**IC Review**) (Option 2 below).

You do not have to apply for internal review before seeking IC review. However, the Information Commissioner has expressed the view that it is preferable for a person to seek internal review by the agency before applying for IC Review. If you choose Option 1 (internal review), you can also apply for IC review of the internal review decision within 60 days after receiving notice of our decision.

Option 1 – Internal review

You can seek internal review of the decision. An application for internal review must be made in writing within 30 days after the date you were notified of the decision, or within such further period as the Merit Protection Commissioner allows. The internal review will be conducted by a senior officer who had no involvement in the initial decision.

There is no particular form required to make a request for internal review. However, it would help the reviewer if you said, in writing, why you think the decision should be reviewed.

An application for an internal review of the decision should be sent to:

Email: FOI@apsc.gov.au

Option 2 – Review by the Australian Information Commissioner

Alternatively, you can apply in writing to the Australian Information Commissioner for IC review of the decision. An application for IC Review must be made within 60 days after the day you were given notice of this decision.

In making your application, you need to provide an address for notices to be sent (this can be an email address) and a copy of this decision. It would also help the Australian Information Commissioner if you set out the reasons for seeking IC review in your application.

To apply for IC review, please refer to the FOI Fact Sheet 13 issued by the Office of the Australian Information Commissioner (http://www.oaic.gov.au/images/documents/freedom-of-information/foi-factsheets/FOI_factsheet12_your-rights_online_July2012.pdf). You can file your application online at <https://forms.business.gov.au/aba/oaic/foi-review/> or download a review form from the OAIC's website www.oaic.gov.au.

Complaints

You can complain to the Australian Information Commissioner about action taken by the Merit Protection Commissioner in relation to your freedom of information request. Your complaint

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must be in writing and it is the Information Commissioner's preference that an online complaint form be completed. The form can be found at https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1. Alternatively, you can send a letter to the Office of the Australian Information Commissioner, GPO Box 5218, Sydney NSW 2001 or send an email to enquiries@oaic.gov.au.

Yours sincerely



Amber Read
Authorised FOI Decision Maker

10 August 2018