

By email: foi+request-4644-358d4bd7@righttoknow.org.au

Dear Mr Richards,

Your Freedom of Information Request – Notice of Decision on Access

I refer to your email dated 14 June 2018 in which you requested access under the *Freedom of Information Act 1982 (Cth) (FOI Act)* to:

Document/s showing the FOI requests received in the last two years, the outcome of the request, the applicant (business/member of public), if documents were released and a general description of what the request was after.

Decision

Airservices Australia (**Airservices**) has identified 1 document as falling within the scope of your FOI request. This document, and my decision in relation to the document, is set out in the schedule at **Attachment A (the Schedule)**.

I have decided to grant you partial access to the document.

I have found that the document, as identified in the Schedule, contains material which is conditionally exempt under section 47G (business) 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 part of the document can be released to you.

You may also find Airservices FOI disclosure log useful. The disclosure log can be accessed at: <http://www.airservicesaustralia.com/about/information-publication-scheme/>

Reasons for decision

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

Provision of documents

A copy of the document I have decided to release to you is **attached**.

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 me via email legal@airservicesaustralia.com.

Yours sincerely



Shan Gunawardena
FOI Coordinator & Authorised FOI Decision Maker
(3 July 2018

ATTACHMENT A

**FOI Decision
SCHEDULE OF DOCUMENTS**

Doc No.	No.of Pages	Date	Description	Decision	Exemption
1A	22	n.d.	FOI Register – 2017 (spreadsheet 1 of 2 contained in the same Excel document)	Partial release	<u>Section 47F(1) (personal privacy)</u> p. 1- 7 <u>Section 47G (business)</u> p. 5-8 <u>S22 irrelevant</u> p. 5, 9-15, 20-22
1B	10	n.d.	FOI Register – 2018 (spreadsheet 2 of 2 contained in the same Excel document)	Partial release	<u>Section 47F(1) (personal privacy)</u> p. 1-3 <u>Section 47G (business)</u> p. 3-4 <u>S22 irrelevant</u> p. 5-10

FOI Request: FOI39-0618 – FOI Stats – Mr Richards

FOI Decision
STATEMENT OF REASONS

YOUR FOI REQUEST

On 14 June 2018, you requested access to the following documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

Document/s showing the FOI requests received in the last two years, the outcome of the request, the applicant (business/member of public), if documents were released and a general description of what the request was after.

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 document relating your request (identified in the Schedule at **Attachment A**), I have decided to:

- grant you partial access to 1 document;

I have found that parts of the document, as identified in the Schedule, contains material which is

- conditionally exempt under section 47G (business) and section 47F (personal privacy) of the FOI Act, and disclosure of that information would be contrary to the public interest.

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 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 parts of the document (as identified in the Schedule) contain personal information about individuals other than yourself. This information includes names, code of conduct allegations and other information of a personal nature, including material that enables a person to be reasonably identifiable from linking together information. For example, where a FOI request relates to a code of conduct investigation, the applicant's name, as well as information in the request itself (such as the identity of the complainant, incident date and location of incident) have been redacted.

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 47G – Public interest conditional exemption - Business

Section 47G of the FOI Act relevantly provides:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
 - (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation in respect of its lawful business, commercial or financial affairs; or*

- (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

Certain documents (as identified in the Schedule) contain business information about third party organisations, including airlines, airports, research organisations and other entities. This information includes FOI requests relating to employee issues, plane movements, research and other concerns.

If the information was made publicly available:

- the information could unreasonably affect the business, commercial or financial affairs of the organisations involved. For example, it could give a competitor an unfair advantage, if it knew about the issues affecting another company.
- the future supply of information to the Commonwealth or Airservices could be prejudiced, as organisations could become reluctant to share information with Airservices. This would adversely impact Airservices' operations, as it is important that issues are identified and resolved.

I therefore find that the relevant information is conditionally exempt under section 47G of the FOI Act.

I note, however, that the redactions applied have been the minimum amount possible, so that the nature of the FOI request is preserved, as much as possible. For example, if a FOI request relates to a specific Airport, instead of redacting the full name of the airport (eg. 'Canberra Airport'), the word 'Airport' has been left in, so that the type of organisation can be ascertained.

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 and 47G.

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 the fair treatment of individuals (where the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct);
- prejudice to Airservices' ability to obtain similar information in the future;
- prejudice to an organisation's commercial activities;

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.



Shan Gunawardena
FOI Coordinator & 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.

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: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: enquiries@oaic.gov.au</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. 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

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