



Our reference: FOIREQ18/00140

**Ms Verity Pane**

By email: [foi+request-4849-70a070c9@righttoknow.org.au](mailto:foi+request-4849-70a070c9@righttoknow.org.au)

**Your Freedom of Information request**

Dear Ms Pane

I refer to your request for access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act), received by the Office of the Australian Information Commissioner (OAIC) on 28 September 2018.

You requested access to:

Under FOI I seek copy of all emails and other records of communication between Carl English of your Office, and DVA, for the period 18 August 2018 to 28 September 2018 inclusive.

On 15 October 2018, we wrote to you seeking your confirmation of the scope of your FOI request.

On 15 October 2018, you responded and advised that:

... I do not consent to the redaction of names of DVA or OAIC public servants in any official document within scope.

I do consent however to the redaction of phone numbers, email addresses and desk locations as they are not necessary for accountability and transparency purposes, and are merely incidental information.

I do consent to exclude from scope any document that refers to a private individual (which is not a public servant carrying out their official duties, as that falls into official, not private information), other than myself. For that reason I do not exclude file reference numbers or other reference numbers, as they would not reveal the private personal information of another private individual

**Decision**

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have identified eight documents falling within the scope of your request. I have decided to grant you access to four documents in full, with irrelevant material deleted under s 22 of the



FOI Act. I have decided to grant you access to four documents in part, with exempt material deleted under s 47F of the FOI Act and irrelevant material deleted under s 22 of the FOI Act.

A schedule describing each document and the access decision I have made is at Appendix A to this decision.

## **Reasons for decision**

### **Material taken into account**

In making my decision, I have had regard to the following:

- your freedom of information request of 28 September 2018 and your email of 15 October 2018
- the documents at issue
- the FOI Act, in particular ss 11A(5), 22 and 47F
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (the FOI Guidelines), particularly at [3.95]-[3.100], [6.7]-[6.27], [6.124]-[6.157] and [6.161]-[6.172].

### **Irrelevant material (s 22)**

Section 22 of the FOI Act provides that irrelevant information can be deleted from a document if it is reasonably practicable to prepare a copy of the document modified by deletions, and the modified copy would not disclose the irrelevant material.

I have considered your advice of 15 October 2018, that you do not seek access to the phone numbers and email addresses of staff of the Department of Veterans' Affairs (the Department) and the OAIC. I have deleted this material as irrelevant to your request.

I have also deleted in document 8, the specific Right to Know email address, as irrelevant to your request.

### **Personal privacy conditional exemption s 47F**

I have decided that documents 1, 2, 3 and 7 are conditionally exempt in part under s 47F of the FOI Act. The relevant material is the name of a departmental officer.

Section 47F of the FOI Act conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). This exemption is intended to protect the personal privacy of individuals.

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

I am satisfied that the name of the departmental officer is personal information for the purposes of the FOI Act.

In determining whether disclosure of personal information would be unreasonable, s 47F(2) of the FOI Act requires me to have regard to the following matters:

- the extent to which the information is well known
- 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
- the availability of the information from publically accessible sources
- any other matters I consider relevant.

The FOI Guidelines provide that where a public servant's personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. The FOI Guidelines provide a non-exhaustive list of examples of special circumstances.

I find that documents 1, 2, 3 and 7 contain the full name of a public servant, appearing in the context of the documents as part of their usual duties and responsibilities.

The Department has provided confidential submissions which it contends identify special circumstances that would make it unreasonable to disclose the surname of the departmental officer.

I note that pursuant to s 26(2) of the FOI Act, this notice is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

I have considered the Department's submissions and I am satisfied that special circumstances exist in this case that mean disclosure of the departmental officer's surname would be unreasonable. The surname of the departmental officer is conditionally exempt under s 47F of the FOI Act.

### **Public interest test (s 11A)(5))**

Under s 11A(5) access must be given to a conditionally exempt document unless in the circumstances giving access would, on balance, be contrary to the public interest.

The public interest factor that would favour disclosure is that the disclosure would promote the objects of the FOI Act.

Against this factor, I consider that disclosing the surname of the departmental officer could reasonably be expected to prejudice the protection of an individual's right to privacy and prejudice the management function of an agency.

In considering where the public interest lies, I must consider the factors that favour disclosure balanced against the factors that favour non-disclosure.

On balance, I consider that the factors against disclosure outweigh the factor in favour of the disclosure.

On this basis I have decided that it would be contrary to the public interest to give access to the information that I have found to be conditionally exempt under s 47F of the FOI Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Megan McKenna', with a stylized flourish at the end.

**Megan McKenna**  
FOI Officer  
Legal Services

29 October 2018

## If you disagree with my decision

### Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

### Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, it is likely that the Information Commissioner will decide (under s 54W(b) of the FOI Act) not to undertake an IC review on the basis that it is desirable that my decision be considered by the AAT.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for internal review or IC review can be submitted to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Alternatively, you can submit your application by email to [foi@oaic.gov.au](mailto:foi@oaic.gov.au), or by fax on 02 9284 9666.

## **Accessing your information**

If you would like access to the information that we hold about you, please contact [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). More information is available on the [Access our information](#) page on our website.

## **Disclosure log**

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that it would be unreasonable to publish.

The documents I have decided to release to you do not contain business or personal information that would be unreasonable to publish. As a result, the documents will be published on our [disclosure log](#) shortly after being released to you.



### Appendix A: Schedule of documents – Freedom of Information request no FOIREQ18/00140

| Document no. | Date              | Description   | Decision on access | Exemption |
|--------------|-------------------|---|--------------------|-----------|
| 1            | 7 September 2018  | Email providing extension decision to the Department of Veterans' Affairs | Release in part    | 47F       |
| 2            | 7 September 2018  | 15AB decision letter to Department of Veterans' Affairs                   | Release in part    | 47F       |
| 3            | 25 September 2018 | Email chain in relation to MR18/00607                                     | Release in part    | 47F       |
| 4            | 14 September 2018 | File note (MR18/00607)  | Release in full    |           |
| 5            | 27 September 2018 | File note (MR18/00607)  | Release in full    |           |

|   |                   |  |                 |     |
|---|-------------------|--|-----------------|-----|
| 6 | 27 September 2018 | File note (MR18/00607)                 | Release in full |     |
| 7 | 28 September 2018 | Acknowledgement of receipt of decision | Release in part | 47F |
| 8 | 28 September 2018 | Email chain in relation to MR18/00607  | Release in full |     |