



Our reference: FOIREQ18/00169

## Ms Verity Pane

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

## Your request for internal review

Dear Ms Pane,

I am writing to advise you of my decision on your application for internal review of a decision to grant access to documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

## Background

On 28 September 2018, you wrote to the OAIC requesting the following documents under the FOI Act:

...all emails and other records of communication between Carl English, of the OAIC, and DVA, for the period 18 August 2018 to 28 September 2018.

On 15 October 2018, you agreed:

to the redaction of phone numbers, email addresses and desk locations

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.

## Scope of the internal review application

This internal review covers redactions made under sections 47F of the FOI Act, to documents 1, 2, 3 and 7.

## Decision and reasons for decision

An internal review decision is a 'fresh decision' made by a person other than the person who made the original decision (s 54C of the FOI Act).

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests. In accordance with s 26 of the FOI Act, this is my statement of reasons.

I have decided to grant access to the documents in part. A schedule of documents containing the decision I have made is attached to this decision.

### **Material taken into account**

I took the following material into account in making my decision:

- the documents under review
  
- the FOI Act
  
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines), in particular Part 9, [6.124]-[6.130], [6.152] – [6.157].

### **Personal Privacy (s 47F)**

Documents 1, 2, 3 and 7 contain personal information about a public servant.

‘Personal Information’ has the same meaning as in the [Privacy Act 1988](#) (the [Privacy Act](#)) ([s 4\(1\)](#) of FOI Act). [Section 6\(1\)](#) of the [Privacy Act](#) provides:

‘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.

The FOI Guidelines explain that personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

The documents you have requested contain personal information, being the name of a public servant.

Accordingly, I am satisfied that this material is personal information for the purposes of s 47F.

### **Would disclosure involve an unreasonable disclosure of personal information?**

In relation to the second requirement of s 47F, that disclosure under the FOI Act would involve an unreasonable disclosure of personal information, s 47F(2) provides that a decision maker must have regard to:

- 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 publicly accessible sources, and
- any other matters that the agency or minister considers relevant.

It would ordinarily be reasonable for a public servant's name to be released in documents requested under FOI. However, in this particular case, the Department has provided confidential submissions identifying special circumstances that would make it unreasonable to disclose the surname of the public servant.

I cannot outline those submissions in this decision as they would be exempt under the FOI Act. Section 26(2) of the FOI Act does not require information be outlined in an FOI decision notice if it would be exempt under the FOI Act.

I have decided that the relevant material is conditionally exempt under s 47F.

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

In finding that the relevant material is conditionally exempt, I am therefore required to consider whether it would be contrary to the public interest to give the applicant access to conditionally exempt documents at this time (s 11A(5)).

In this case, the relevant public interest factor favouring disclosure would be that disclosure would promote the objects of the FOI Act.

The public interest factors favouring disclosure must be balanced against any public interest factors against disclosure. Disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy and could reasonably be expected to harm the interests of an individual.

In this case, the factors against disclosure outweigh the factors in favour of disclosure. I am satisfied that giving access to the relevant material would, on balance, be contrary to the public interest.

The relevant material is exempt under s 47F of the FOI Act.

Please see the following page for information about your review rights and information about the OAIC's disclosure log. If you have any questions, please contact us.

Yours sincerely

*Amanda Nowland*

Senior Lawyer  
21 November 2018

## **Your review rights**

If you disagree with my internal review decision, you may request a review by the Information Commissioner.

However, where it is in the interests of the administration of the FOI Act to do so, the Information Commissioner can refer requests for review directly to the Administrative Appeals Tribunal (AAT).

The Information Commissioner considers that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision made by their own agency. For this reason, if you apply for IC review of an OAIC decision, the Information Commissioner may decide not to undertake an IC review on the basis that it is desirable that the decision be reviewed by the AAT.

Once the Information Commissioner has made that decision, you will be able to apply to the AAT. You cannot go directly to the AAT after receiving this notice decision; you must first make an application for IC review. Information about requesting an IC review is available on the OAIC website on the Requesting a review page.

If you are not satisfied with the way we have handled your FOI request, you can complain to us by email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or by using the other ways to contact us published on the OAIC website. You can also complain to the Commonwealth Ombudsman. Information about how to do this is available on the Ombudsman 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 would be unreasonable to publish.

The documents released to you under this FOI request will not be published, as they contain your personal information that would be unreasonable to publish.