



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ18/00152

Julie

By email: foi+request-4874-0db9b8ba@righttoknow.org.au

Your Freedom of Information request – Decision on access

Dear Julie

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 11 October 2018.

You requested access to:

... all documents (including emails, sms messages, file notes and any other 'document' type the FOI Act recognises) between the OAIC (which should mostly be Carl English) and any other area of the OAIC and any employee of the DVA that relate or refer to:

^ DVA FOI 24434

^ OAIC RQ18/02960 and

^ any communication about me

The scope of time period is 17 August 2018 to 11 October 2018 inclusive.

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 six documents in full. I have decided to grant you access to two documents in part, with exempt material deleted under s 47F of the FOI Act.

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

Reason for decision

Material taken into account

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

- your freedom of information request of 11 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]-[6.28], [6.124]-[6.157] and [6.161]-[6.172].

Personal privacy conditional exemption (s 47F)

I have decided that documents 6 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 in the FOI Act has the same meaning as in the *Privacy Act 1988* (Cth) (Privacy Act). Under s 6 of the Privacy Act, 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 for 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 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 exist (at [6.153]). The FOI guidelines at [6.156] provide a non-exhaustive list of examples of special circumstances.

I find that documents 6 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 identified in documents 6 and 7.

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 a 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.

I have identified one public interest factor that would favour disclosure: that 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 determining where the public interest lies, I must consider the factors that favour disclosure balanced against factors that favour non-disclosure. In this instance, on balance, I consider that the factors against disclosure outweigh the factor in favour of disclosure.

Therefore, I have decided that it would be contrary to the public interest to give access to the material I have found to be conditionally exempt under s 47F of the FOI Act.

Yours sincerely



Megan McKenna

FOI Officer
Legal Services

12 November 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, 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. 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.



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Appendix A: Schedule of documents – Freedom of Information request no FOIREQ18/00152

Document No.	Date	Description	Decision on Access	Exemption
1	10 October 2018	Email from DVA to OAIC	Release in full	
2	10 October 2018	Email attachment	Release in full	
3	11 September 2018	Email attachment	Release in full	
4	27 September 2018	Email attachment	Release in full	
5	3 October 2018	Email attachment	Release in full	
6	10 October 2018	Email from OAIC to DVA	Exempt in part	47F
7	10 October 2018	Email attachment	Exempt in part	47F
8	11 October 2018	File note	Release in full	