



Our reference: FOIREQ18/00211

O Wendell

By Email: foi+request-5173-e337a22a@righttoknow.org.au

Your Freedom of Information request

Dear O Wendell,

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 21 December 2018.

You requested access to:

Information contained in the documents prepared for OAIC witnesses for the purposes of the Australian Senate's Legal and Constitutional Affairs Legislation Committee hearing on 22 October 2018, limited to information about:

- i) the Right to Know website
- ii) the Australian Public Service Commission (APSC); and/or
- iii) the former Public Service Commissioner, John Lloyd.

You also agreed to extend the timeframe for a decision on your request an additional 30 days, making the due date the 19 February 2018.

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 2 documents that are relevant to your request. There are 8 pages that fall within the scope of your request.

The first document is a document titled "Commissioner Brief: FOI – General Issues". One page of that document contains information about the Right to Know website (page 5).

The second document is titled "Commissioner Brief: FOI – signification cases update". Five pages of that document contain information about Right to Know (page 18, 46 and 50 – 52) and two pages contain information about the APSC (page 28 and 30).

I have deleted irrelevant material under s 22, and redacted certain material under s 47F.

Reasons for decision

Material taken into account

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

- Your FOI request
- The relevant documents
- 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], [6.124]-[6.157], [6.1]-[6.27], [14.16]-[14.17].

Documents within scope

Irrelevant material (s 22)

Subsection 22(1) allows for the deletion of irrelevant material where it is reasonably practicable to prepare a copy of the document modified by deletions, and the modified copy would not disclose the irrelevant information.

I have removed the irrelevant material from the two relevant documents.

The first document is a document titled “Commissioner Brief: FOI – General Issues”. One page of that document contains relevant information about the Right to Know website (page 5).

The second document is titled “Commissioner Brief: FOI – signification cases update”. Five pages of that document contain information about Right to Know (page 18, 46 and 50 – 52) and two pages contain information about the APSC (page 28 and 30).

Personal privacy (s 47F)

I have decided that the relevant parts of the document “Commissioner Brief: FOI significant cases update” are conditionally exempt from disclosure under s 47F of the FOI Act. The relevant material that I have found to be conditionally exempt are the details of cases at the OAIC. The material includes description and case details of matters that are related to requests lodged through the Right to Know website or involve the APSC.

Section 47F conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person. ‘Personal information’ means information or an opinion about an identified individual, or an individual who is

reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in material form or not.

The FOI Guidelines provides guidance on determining whether the disclosure of personal information will be unreasonable. This requires a consideration of:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be associated with the matters in the document
- the availability of the information from publicly accessible sources
- any other matters the agency or Minister considers relevant.

I am satisfied that the case details of OAIC matters are not public information. If this information were disclosed publicly, it would affect the parties to those matters.

On this basis, I consider that disclosure of the personal information would be unreasonable. I find the case details of OAIC matters to be exempt under s 47F.

The public interest (s 11A(5))

I have found that part of the “Commissioner Brief: FOI significant cases update” is conditionally exempt under s 47F.

An agency cannot refuse access to a conditionally exempt document unless giving access would, on balance, be contrary to the public interest (s 11A(5)).

In considering where the public interest lies, I must consider the factors that favour disclosure balanced against factors that favour non-disclosure set out in the FOI Guidelines. Section 11B(3) of the FOI Act lists four factors which favour disclosure.

In relation to the material I have redacted under s 47F, the public interest factor favouring disclosure is that disclosure would promote the objects of the FOI Act.

Against these factors I must balance the factors against disclosure. The FOI Act does not specify any factors against disclosure, however the FOI Guidelines provide a non-exhaustive list of factors against disclosure.

In relation to the release of party and case details I find that the release of that information would harm the interests of those individuals who are parties to OAIC matters.

On balance, I consider that the factors against disclosure outweigh the factor in favour of disclosure. I have therefore decided that it would be contrary to the public interest to give you access to the information that I have found to be conditionally exempt under s 47F of the FOI Act.

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

Yours sincerely,

Amanda Nowland
Senior Lawyer

15 February 2019

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, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

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.