



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2019/008 – internal review

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Jackson Gothe-Snape

**DECISION BY: Gerard Martin
First Assistant Secretary
Ministerial Support Division**

Dear Mr Gothe-Snape,

I refer to your request, dated 9 January 2019, made to the Department of the Prime Minister and Cabinet (the Department), in which you made a request under the *Freedom of Information Act 1982* (the Act), in the following terms:

All image and graphic files from the Prime Minister's family 2018 Christmas picture series, including all files edited by photo-editing programs.

On 8 February 2019 the Department provided you with a decision on this request. The decision was to release three documents to you in full, with irrelevant material deleted.

On 9 February 2019 you requested an internal review of this decision, in the following terms:

I sought all the graphic files - that includes Photoshop files or other files produced by the designer as part of the modification process - not just the ultimate output. Can I also please get these files in their native formats, not PDF.

Authorised decision-maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision.

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the Act.

Matters Taken Into Account

In making my decision, I have considered the following:

- the terms of your FOI request;
- the original decision on this request;
- the terms of your internal review request;
- documents subject to your request;
- the provisions of the Act;
- consultations with the Department's FOI advisers; and
- Guidelines made by the Australian Information Commissioner issued under section 93A of the Act (FOI Guidelines)

Internal Review Decision

I have decided to affirm the primary decision granting you access to the three documents in PDF format with irrelevant material deleted under section 22 of the FOI Act.

Reasons

In my view, your request for internal review raises the following primary issues:

- Are the 'graphic files including Photoshop files or other files produced by the designer as part of the modification process' (collectively, the 'graphic files and other files') relevant to the FOI request?
- Is the Department required to give access to the documents relevant to the FOI request in the form that you have requested?

Are the 'graphic files including Photoshop files or other files produced by the designer as part of the modification process' (collectively, the 'graphic files and other files') relevant to the FOI request?

Interpretation of scope

In relation to the interpretation of the scope of an FOI request, paragraph 3.54 of the FOI Guidelines provides that a request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used. A request for a 'file' should be read as a request for all of the documents contained in the file, including the file cover.

I have been advised that the primary decision maker interpreted the scope of your FOI request as follows:

- The term 'picture series' in your FOI request was interpreted as 'photo series' rather than 'Christmas card series.' The photo in question was commissioned by the Prime Minister's Office, and the Department had no involvement or oversight of this process. The Prime Minister's Office provided a single photo to the Department for use in the Christmas card, which is the photo identified (document 1).

- The term ‘edited’ in your FOI request was interpreted such that a cropped photo did not constitute a separate document for the purpose of being ‘edited’. The term ‘edited’ was therefore interpreted to refer to substantive edits (such as the substitution of the shoes worn by the Prime Minister).

In my view, the primary decision maker’s interpretation of the FOI request was reasonable.

Document searches

The FOI Act requires an agency to undertake ‘all reasonable steps’ to find a document relevant to an FOI request. In relation to the requirement to take ‘all reasonable steps’, the FOI Guidelines relevantly provide as follows:

3.88 The Act is silent on what constitutes ‘all reasonable steps’. The meaning of ‘reasonable’ in the context of s 24A(1)(a) has been construed as not going beyond the limit assigned by reason, not extravagant or excessive, moderate and of such an amount, size or number as is judged to be appropriate or suitable to the circumstances or purpose.

3.89 Agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s operating environment or the minister’s office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents
- the current and past file management systems and the practice of destruction or removal of documents
- the record management systems in place
- the individuals within an agency or minister’s office who may be able to assist with the location of documents, and
- the age of the documents.

For the purpose of this review, the Department has undertaken additional searches of relevant holdings. As a result of these searches, I have identified no further documents – in particular, no further versions of the photos – as being relevant to your FOI request apart from the documents identified by the primary decision maker.

In my view, you have requested documents additional to those that were provided to you in the original decision, in your review request.

Is the Department required to give access to the documents relevant to the FOI request in the form that you have requested?

In your request for review, you have requested that the documents be provided to you in an alternate form, being their native formats, not as a PDF.

The primary decision maker granted access to the three documents in full with irrelevant material redacted under section 22 of the FOI Act. The form in which the documents were granted to you was by way of copies in Adobe Portable Document Format (PDF).

Relevantly, section 20 of the FOI Act governs the forms in which an applicant is entitled to be granted access to a document under the FOI Act. Section 20 of the FOI Act relevantly provides as follows:

- (1) Access to a document may be given to a person in one or more of the following forms:
 - (a) a reasonable opportunity to inspect the document;
 - (b) provision by the agency or Minister of a copy of the document;
 - (c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;
 - (d) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the agency or Minister of a written transcript of the words recorded or contained in the document.
- (2) Subject to subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.
- (3) If the giving of access in the form requested by the applicant:
 - (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of his or her functions, as the case may be;
 - (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would not be appropriate; or
 - (c) would, but for this Act, involve an infringement of copyright (other than copyright owned by the Commonwealth, an agency or a State) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of a Department of State;access in that form may be refused and access given in another form.

In relation to section 20 of the FOI Act, The FOI Guidelines relevantly provide as follows:

3.200 The right to access a document in a particular form may be refused and access given in another form in the following circumstances:

- where access would interfere unreasonably with the agency's operations or the performance of a minister's functions (s 20(3)(a)) — for example, if an applicant asks to inspect documents that an agency requires for everyday operations
- if it would be detrimental to the preservation of the document or not appropriate given the physical nature of the document (s 20(3)(b)) — for example, if a document is fragile or if giving access outside its normal environment might result in damage, or the document cannot be photocopied due to its condition or because it is a painting, model or sculpture

- if giving an applicant access to a document in a certain form would, but for the FOI Act, involve an infringement of copyright in relation to the matter contained in the document (s 20(3)(c)). This provision does not apply where the matter contained in the document relates to the affairs of an agency or department of state or if the copyright holder is the Commonwealth, an agency, or a State.

3.201 Agencies and ministers are expected to make reasonable use of available technology to facilitate access to documents — for example, by providing copies by electronic transmission, or to provide access in a particular form that is possible only through technology. Access to documents by means that do not require physical inspection in an agency office should generally be preferred.

3.202 The FOI Act gives a legally enforceable right of access to documents that already exist, and an agency is not required to create a new document to satisfy an FOI request. However, an agency should consult with an applicant as to the most effective manner of providing access to the information an applicant seeks, including by administrative release of information that has been compiled from documents or a database (see [3.2]).

3.203 An applicant can seek internal or IC review of a decision not to provide access in the form requested by the applicant where all documents to which the request relate have not been provided (s 53A(c)).

Relevantly, section 22 of the FOI Act relevantly provides as follows:

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an ***edited copy***) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Although the Department has fulfilled its obligations by providing the documents to you in PDF format, I have considered whether it would be appropriate to provide them to you in an alternative form. In my view, the documents cannot be provided to you in their native formats for the following reasons:

- Your right to obtain access to a document in a particular form under section 20(2) of the FOI Act is subject to section 22 of the FOI Act. It is not possible to prepare edited copies of the documents such that the edited copies do not contain irrelevant material. The documents relevant to your FOI request in their native formats contain metadata that includes the names of Australian Public Service officers not in the Senior Executive Service (SES), which is irrelevant to the terms of your FOI request under the Department's redaction policy as previously advised. The only possible form in which the documents could be granted to you that does not disclose the irrelevant information is to prepare edited copies by converting the documents to PDF format.
- Your right to obtain access to a document in a particular form under section 20(2) of the FOI Act is also subject to section 20(3) of the FOI Act. Granting you access to the documents in their native format would interfere unreasonably with the operations of the Department by exposing the department to undue risk. This is because the Department finalises documents in PDF format by redacting information with Adobe Pro to ensure that all metadata can be removed, and that all sensitive information that needs to be assessed is clear within the document itself.

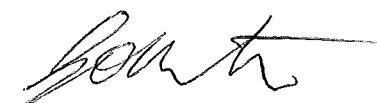
Review rights

Information about your rights of review is attached to this decision.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this decision. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking a review of the Department's decision.

A complaint to the Information Commissioner must be in writing and identify the agency in respect of which the complaint is made. The Office of the Australian Information Commissioner (OAIC) may be contacted by phone (1300 363 992), email (enquiries@oaic.gov.au) or by letter (GPO Box 2999, Canberra ACT 2601). Further information about the OAIC can be found on its website: <https://www.oaic.gov.au/>.



Gerard Martin
First Assistant Secretary
Ministerial Support Division

12 March 2019