



Australian Government
Australian Public Service Commission

M Poler

By email: foi+request-5270-7f97697b@righttoknow.org.au

Reference: C19/464

Dear Sir / Madam

Freedom of information request

1. I refer to your request dated 22 February 2019 for access to documents under the *Freedom of Information Act 1982* (FOI Act).
2. The FOI Act is publicly available from www.legislation.gov.au.

Scope of your request

3. You requested access to the following documents held by the Australian Public Service Commission (the Commission):

“Under the FOI Act, I seek access to any emails contained in all of John Lloyd’s email account (including deleted items) that contain the following word (in the body of an email and/or in the addressee fields of an email): “Roskam”.”

4. In your request you excluded the following categories of information from the scope of your request:

I’m happy for the personal information of any person to be redacted from relevant documents except for Mr Lloyd’s and Mr Roskam’s personal information and except for the personal information of any person who was a public servant at the relevant time.”

Decision on your FOI request

5. This letter sets out my decision on your request for access to documents under the FOI Act. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.
6. I have identified 8 documents relevant to your FOI request. I have attached a schedule listing the documents relevant to your request at **Attachment A**.
7. I have decided that parts of some of the documents you have requested are exempt from disclosure under the FOI Act. My reasons for this decision are set out at **Attachment B**.

Deletion of exempt matter or irrelevant material

8. Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of a request.
9. I have attached to this letter copies of documents relevant to your request. These documents have been edited to remove material that is either exempt material or material that is irrelevant to the scope of your request.
10. The schedule at Attachment A sets out the grounds on which information has been redacted from the documents relevant to your request. Where section 22 is identified as the basis on which redactions are made, this is because the relevant material falls within the scope of the categories of information referred to at paragraph four above.

Review rights

11. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Publication

12. The Commission must publish information relating to material that has been released in response to each FOI access request. This publication is known as a 'disclosure log'.
13. The disclosure log requirement does not apply to personal information about any person if it would be unreasonable to publish the information or to information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable.
14. The Commission is not required to consult you on any decision to publish information that is released to you and the decision to publish information is not subject to review internally by the Commission or externally by the Australian Information Commissioner. Any person can however, make a complaint to the Australian Information Commissioner about how an agency handles an FOI request.

Contacts

15. If you require clarification of any of the matters in this letter you may contact the Commission's FOI co-ordinator by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Yours sincerely



Michelle Black
Authorised FOI decision maker
23 April 2019

ATTACHMENT A

FOI request – M Poler Schedule of documents relevant to request						
Document	Folio(s)	Date	Author	Recipient	Description	Basis of redaction(s)
1	1	25/02/2015	John Lloyd	John Roskam	Email	s.22, s.47F
2	5	13/04/2015	John Lloyd	John Roskam	Email (with attachment)	s.22, s.47F
3	19	24/04/2015	John Lloyd		Calendar entry	s.22
4	20	24/07/2018	Linda Waugh	John Lloyd	Email	s.22, s.47F
5	22	24/07/2018	John Lloyd	Linda Waugh	Email	s.22, s.47F
6	24	27/05/2016	John Roskam	John Lloyd	Email	s.22, s.47F
7	27	13/04/2015	John Lloyd	John Roskam	Email	s.22, s.47F
8	29	07/01/2015	Redacted	John Lloyd	Email	s.22, s.47E, s.47F

REASONS FOR DECISION

1. Where the Schedule at **Attachment A** indicates an exemption has been applied to a document or part of a document, my findings of fact and reasons for determining the specified exemption applies are set out below.

Material taken into account

2. In making my decision on your request, I had regard to the following:
 - the terms of your request;
 - submissions made by you in relation to the processing of your request;
 - the content of the documents you requested;
 - advice from employees of the Australian Public Service Commission (the Commission) with responsibility for matters concerning the documents you have requested;
 - the relevant provisions of the FOI Act;
 - FOI guidelines issued by Australian Information Commissioner and published on the website of the Office of the Australian Information Commissioner (OAIC).

Section 22 – irrelevant material

3. The documents you have requested include personal information about a number of individuals. You excluded from the scope of your request personal information about individuals other than Mr Lloyd, Mr Roskam and any person who was a public servant at the relevant time. Therefore, the documents you requested have been edited to remove the information you excluded.
4. Please note that when documents are printed from the Microsoft Outlook email program, the name of the person who printed the document is included at the top left corner of the document. As these names do not comprise part of the original documents and are added at a later time I have redacted these names where they were added to the documents you requested.

Section 47F – personal privacy

5. Section 47F of the FOI Act provides that a document is conditionally exempt from disclosure if disclosure would involve the unreasonable disclosure of personal information about any person.
6. For the reasons that follow, I consider that disclosure of some parts of the documents you have requested would involve an unreasonable disclosure of personal information about Mr Lloyd, Mr Roskam and other individuals.
7. Paragraph 6.138 of the FOI Guidelines states the following about the test of unreasonableness in section 47F:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

8. In determining whether the disclosure of a document would involve an unreasonable disclosure of personal information, subsection 47F(2) of the FOI Act provides that an agency must 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 publicly accessible sources; and
 - any other information that the agency considers is relevant.
9. With respect to the factors listed at subsection 47F(2) of the FOI Act, I am satisfied that the information referred to at paragraph 6:
- is not well-known;
 - concerns individuals who are not known to be associated with the specific details included in documents; and
 - is not available from publicly accessible sources.

Other relevant factors

10. I have had regard to the factors set out at paragraphs 6.142 and 6.143 of the FOI Guidelines. Those factors, and my consideration of those factors are set out in the following table.

Factor	Consideration of factor
Whether the author of the document is identifiable.	I do not consider this factor to be relevant.
Whether the documents contain third party personal information.	The requested documents contain personal information about several third parties.
Whether release of the documents would cause stress on the third party.	In my opinion, disclosure of the requested documents would cause stress on the individuals whose personal information you have requested.
Whether any public purpose would be achieved through release.	In my opinion, disclosure of the telephone numbers and security clearance

	information would not achieve any public purpose.
The nature, age and current relevance of the information.	The information in the requested documents is relatively recent and remains relevant.
Any detriment that disclosure may cause to the person to whom the information relates.	In my opinion, disclosure of the requested information would cause detriment to the relevant individuals. Disclosure would breach the privacy of individuals and would cause stress on the individuals.
Any opposition to disclosure expressed or likely to be held by that person.	The relevant individuals have previously expressed opposition or would be likely to express opposition to disclosure of the personal information.
The circumstances of an agency's collection and use of the information.	The relevant information was created by the individuals in the performance of their duties.
The fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act	I note that disclosure of the requested documents to you would result in the immediate publication of the information on the Right to Know web site.
Any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information.	I have taken into account the submissions you have made in your email messages to the APSC.
Whether disclosure of the information might advance the public interest in government transparency and integrity.	I do not consider that disclosure of the personal information would advance the public interest in government transparency and integrity.

11. Paragraph 6.145 of the FOI Guidelines states the following:

Disclosure that supports effective oversight of government expenditure may not be unreasonable, particularly if the person to whom the personal information relates may have reasonably expected that the information would be open to public scrutiny in future.

12. In this regard, I note that the information you have requested is ordinarily regarded as confidential and the relevant individuals would have had no expectation that the information would be open to public scrutiny.

13. In weighing the factors above, it is my opinion that disclosure of the personal information would involve an unreasonable disclosure of personal information. Therefore, I find that

parts of the documents you have requested are conditionally exempt from disclosure under section 47F of the FOI Act.

Section 47E – Certain operations of agencies

14. Section 47E of the FOI Act provides that a document is conditionally exempt from disclosure if disclosure would, or could reasonably be expected to, do any of the following:
 - have a substantial adverse effect on the management or assessment of personnel by an agency (paragraph 47E(c); or
 - have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (paragraph 47E(d).
15. Document eight includes communications between the Australian Public Service Commissioner and the Australian Government Security Vetting Agency (AGSVA) in connection with an individual's security clearance.
16. AGSVA undertakes security clearance assessments on behalf of government agencies, including the Commission. In doing so, AGSVA requires individuals to provide a range of personal information about themselves and about others. In order to carry out these functions, AGSVA is highly reliant on individuals being able to communicate candidly and frankly with AGSVA with the expectation that these communications will remain private and confidential.
17. The disclosure of communications with AGSVA in connection with security clearance assessments would undermine the confidence individuals have in such communications remaining private and confidential. In my opinion, this could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of AGSVA because the free flow of information between AGSVA and individuals would be undermined.
18. To the extent that the operations of AGSVA in providing security clearance assessments were to be undermined, this would have flow-on effects in most Commonwealth agencies, including the Commission. Some of the flow-on effects could be expected to include:
 - security clearances undertaken by AGSVA would take longer because AGSVA would need to undertake more detailed assessments relying on additional sources of information;
 - agencies would be unable to assign certain duties to staff awaiting security clearance assessments;
 - backlogs of security assessments would require agencies to adjust information management practices taking into account a greater proportion of employees without security clearances.

19. Having considered the nature of the material included in document eight, I am satisfied that disclosure of this material would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Commission and have a substantial adverse effect on the proper and efficient conduct of the operations of AGSVA. Therefore, I find that parts of document eight are conditionally exempt from disclosure under section 47E of the FOI Act.

Section 11A – public interest considerations

20. As set out above, I have determined that parts of the documents you have requested are conditionally exempt under sections 47F and 47E of the FOI Act.

21. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

22. I have had regard to the factors set out at subsection 11B(3) of the FOI Act as being public interest factors in favour of granting access to a document. These factors include:

- disclosure would promote the objects of the Act (including all the matters set out in sections 3 and 3A);
- disclosure would inform debate on a matter of public importance; and
- disclosure would promote effective oversight of public expenditure.

23. I have not had regard to the factors set out at subsection 11B(4) of the FOI Act which are deemed to be irrelevant in determining whether access would be in the public interest.

24. I have identified the following public interest factors in favour of disclosure of some of the material I have found to be conditionally exempt from disclosure:

- disclosure of the conditionally exempt material in document eight would provide a certain degree of oversight of the operations of AGSVA.

25. I have identified the following public interest factors as weighing against disclosure of the conditionally exempt parts of the documents you have requested:

- disclosure would adversely affect certain individuals' rights to privacy;
- for reasons set out above in connection with section 47E, disclosure would adversely affect the proper and efficient operations of AGSVA, the Commission and other agencies by undermining the security assessment processes;
- disclosure would adversely affect the capacity of AGSVA to collect information from individuals for the purpose of conducting security assessments.

On balance, it appears to me that the damage to the public interest that would be caused by disclosure is not outweighed by any value that could be attributed to the release of the conditionally exempt materials in informing debate or generating transparency in public administration.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to disclose the conditionally exempt parts of the documents you have requested. I therefore find these parts of the documents to be exempt from disclosure under the FOI Act.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of an FOI decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission, and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au
Post: The FOI Coordinator
 Australian Public Service Commission
 B Block, Treasury Building
 GPO Box 3176
 Parkes Place West
 PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au