



Australian Government
Australian Public Service Commission

M Poler

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

Reference: C19/464

Dear Sir / Madam

Request for internal review

1. I refer to your request dated 3 May 2019 for internal review of an access refusal decision under the *Freedom of Information Act 1982* (FOI Act).
2. The FOI Act is publicly available from www.legislation.gov.au.

Background

3. On 23 April 2019, Ms Michelle Black responded to a Freedom of Information (FOI) request made by you on 22 February 2019 (your request). Ms Black decided that a number of the documents you requested access to were partially exempt from disclosure or contained material irrelevant to your request.
4. You have requested internal review of Ms Black's decision in respect of 'Document 8' listed in the schedule attached to Ms Black's decision.

Decision on your request for internal review

5. This letter sets out my decision on your request for internal review of an access refusal decision under the FOI Act. I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to requests for internal review of access refusal decisions.
6. My role is to bring a fresh, independent and impartial mind to your request for review. I was not involved in or consulted in the making of Ms Black's decision. Internal review is a merit review process and I may exercise all the powers available to the original decision maker.

Deletion of exempt matter or irrelevant material

7. 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.
8. I have attached to this letter a copy of Document 8 edited to remove material that is either exempt material or material that is irrelevant to the scope of your request.

Section 22 – irrelevant material

9. Please note that when documents are printed from the Microsoft Outlook email application, 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 the name of the person who printed Document 8.
10. Document 8 comprises an email thread with exchanges between Mr John Lloyd and an official of the Australian Government Security Vetting Agency (AGSVA). These email exchanges were in connection with a security clearance assessment being undertaken by AGSVA.
11. In email correspondence with the Commission you speculated that Document 8 contained evidence of wrongdoing. Having examined Document 8, it is clear that the email exchanges between Mr Lloyd and AGSVA are relatively routine in nature. In light of the fact that Document 8 is not of a nature that you allege, I consider the name of the AGSVA official to be irrelevant to the scope of your request. I have therefore redacted the AGSVA official's name from Document 8.

Section 47F – personal privacy

12. 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.
13. As noted above, Document 8 comprises email exchanges in connection with a security clearance assessment that was being undertaken by AGSVA. For the purpose of undertaking its functions, AGSVA collects a diverse range of personal information about numerous individuals.
14. AGSVA collects personal information about applicants for security clearances as well as personal information about applicants' family members, friends, referees and associates. The types of personal information collected by AGSVA include:
 - a. personal particulars;
 - b. relationship details, including details of former relationships;
 - c. personal habits, preferences and movements;
 - d. memberships of clubs and associations;
 - e. detailed financial information, including current and former assets and liabilities;
 - f. travel histories and details of contact with foreign officials; and
 - g. information about criminal and disciplinary proceedings.
15. Parts of Document 8 include information falling within several of the categories listed above.

16. I have had regard to the matters set out at subsection 47F(2) of the FOI Act and I have also had regard to the factors set out at paragraphs 6.142 and 6.143 of the Australian Information Commissioner's FOI Guidelines.
17. Taking into account the nature of the personal information in Document 8, I find that disclosure would involve an unreasonable disclosure of personal information about several individuals. I therefore find that personal information in Document 8 is conditionally exempt from disclosure under section 47F of the FOI Act.

Section 47E – Certain operations of agencies

18. 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).
19. AGSVA's functions are set out on its web site:
- <http://www.defence.gov.au/AGSVA/About-us.asp>
20. AGSVA's web site explains why security clearances are necessary:

Misuse or mishandling of classified information or resources, whether deliberate or accidental, can have serious consequences for the Australian Government.

For this reason the government needs to be sure that people who have access to classified information and resources can be relied on to respect and protect classified information and resources appropriately.

The security clearance process is one of the mechanisms used to ensure classified information and resources are only entrusted to suitable people who demonstrate a proper appreciation of their security responsibilities and obligations.

21. It is clear that AGSVA undertakes an important function in the national interest.
22. In order to effectively undertake its functions, AGSVA relies on the free flow of information from agencies, applicants for security clearances, and third parties who may be contacted by AGSVA.
23. In my opinion, disclosure of the personal information in Document 8 would significantly restrict the flow of information to AGSVA in future. Individuals would become very reluctant to provide information to AGSVA, including personal information, if such information was to become available to the public under the FOI Act.

24. In my opinion, disclosure of the personal information in Document 8 would:

- have a substantial adverse effect on the management or assessment of personnel by the Commission and other Commonwealth agencies, now and into the future (paragraph 47E(c); and
- have a substantial adverse effect on the proper and efficient conduct of the operations of AGSVA and other Commonwealth agencies that rely on AGSVA's services (paragraph 47E(d).

25. Taking into account the above, I find that parts of Document 8 are conditionally exempt from disclosure under paragraphs 47E(c) and 47E(d) of the FOI Act.

Section 11A – public interest considerations

26. For reasons provided above, I have determined that parts of the Document 8 are conditionally exempt from disclosure under sections 47F and 47E of the FOI Act.

27. However, I am required by subsection 11A(5) of the FOI Act to give access to Document 8 unless, in the circumstances, access to Document 8 would, on balance, be contrary to the public interest.

28. 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. 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.

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

- disclosure would provide the public with information about how AGSVA undertakes its functions;
- disclosure would provide the public with information about how the Commission, and officers of the Commission, interact with AGSVA.

30. I have identified the following public interest factors as weighing against disclosure of parts of Document 8:

- disclosure would adversely individuals' rights to privacy;
- disclosure would adversely affect the free flow of information to AGSVA and, consequently, have a substantial adverse effect on AGSVA's operations;
- to the extent that AGSVA's capacity to undertake its functions would be diminished, disclosure would adversely affect Australia's national interest; and
- disclosure would undermine the Commission's and, more broadly, the Australian Government's capacity to manage access to classified information.

In my opinion, the public interest factors against disclosure outweigh the public interest factors in favour of disclosure. Therefore, I find that it would, on balance, be contrary to the

public interest to disclose the conditionally exempt parts of Document 8. These parts of Document 8 are therefore exempt from disclosure under the FOI Act.

Review rights

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

Publication

32. 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'.
33. 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.
34. 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

35. 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



Richard Bartlett
Authorised FOI decision maker

31 May 2019

Rights of Review

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