

Michael  
By email: [foi+request-5307-35dd7077@righttoknow.org.au](mailto:foi+request-5307-35dd7077@righttoknow.org.au)  
Our Reference :2019/01

Dear Michael

## **Freedom of Information (FOI) Request - 2019/02**

I refer to your email dated 13 March 2019 seeking access to documents held by the Workplace Gender Equality Agency (the Agency) under the *Freedom of Information Act 1982* (FOI Act).

You have requested access to the following:

*I am making a request under the Freedom Of Information (FOI) Act for all documents relating to the decision to grant the Australian Football League (AFL) status of 2018-19 WGEA Employer of Choice for Gender Equality (EOCGE) citation holder.*

*This should include the application for Employer of Choice for Gender Equality status and any documentation (including emails) relating to the decision making and approval process.*

The FOI Act requires the Agency to undertake consultation prior to making any decision to grant access to documents (subject to exemptions) that contain information including:

- an organisation's business affairs, commercial affairs, or the business commercial or financial affairs of an organisation or undertaking.

As the documents covered by your request contain such information, the Agency is required to consult with the organisation concerned before making a decision on the release of those documents.

Section 15 (6) of the Act provides an extension of 30 days to the statutory 30 day time limit for processing requests where such consultation is required. This extension was applied to your request.

## **My decision**

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests. This letter sets out the reasons for my decision.

I have decided to refuse in full, access to the documents falling within the scope of the FOI request.

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

- The terms of your FOI request
- The content of the documents that fall within the scope of your request;
- The relevant provisions of the FOI Act
- The WGEA 2018-19 EOCGE Guide to Citation
- The FOI Guidelines by the Office of the Australian Information Commissioner (OAIC Guidelines)

## Reasons for my decision

I consider the documents within the scope of your request contain information that is exempt from disclosure under s45(1) of the FOI Act. The section prescribes that:

*Section 45 (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.*

I have caused searches to be undertaken of the Agency's electronic records of its interactions with the Australian Football League. The documents within the scope of this request include the original application from the AFL for an EOCGE citation, and emails related to the assessment of their application.

The 2018-19 EOGGE Guide to Citation expressly states that EOGGE applications are confidential. The correspondence between WGEA and the AFL also forms part of the EOCGE assessment process and/or the AFL's EOCGE application. I have confirmed that the information set out in the documents was provided by AFL to WGEA on a confidential basis.

After considering your FOI request and relevant documentation, and having undertaken appropriate consultations pursuant to the FOI Act, I have decided to refuse your request for access under section 45(1) of the FOI Act. Additionally section 47G of the FOI Act provides that an agency may refuse a request for access to a document if disclosure of the information could reasonably be expected to prejudice the future supply of information for the purposes of the administration of matters administered by an agency.

The relevant provisions applicable to your FOI request can be found at **Attachment A**.

## Rights of Review

If you are dissatisfied with this decision, you are entitled to seek a review. Your rights are set out at **Attachment B** to this letter.

If you require clarification of any of the matters discussed in this decision please contact the Agency by email at [foi@wgea.gov.au](mailto:foi@wgea.gov.au) .

Yours sincerely



Anne Beath  
Operations Executive Manager and FOI Officer  
3 May 2019

## ATTACHMENT A

The following provisions of the FOI Act is relevant to this matter:

### **45 Documents containing material obtained in confidence**

*(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.*

### **47G Public interest conditional exemptions—business**

*(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*

*(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*

*(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

*(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.*

*(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:*

*(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*

*(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*

*(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*

*(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:*

*(a) the Commonwealth or a State; or*

*(b) an authority of the Commonwealth or of a State; or*

*(c) a Norfolk Island authority; or*

*(d) a local government authority.*

*(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.*

## **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 Act, you can apply review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission, and/or
2. a 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 Agency 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@wgea.gov.au

Post:             The FOI Officer  
Workplace Gender Equality Agency  
GPO Box 4917  
SYDNEY NSW 2001

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 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](mailto: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 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 details are:

Telephone: 1300 363 992

Website: [www.oaic.gov.au](http://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:

Telephone: 1300 362 072

Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)