



**Australian Government**  
**Department of the Prime Minister and Cabinet**

ONE NATIONAL CIRCUIT  
BARTON

FOI/2019/150/IR

***FREEDOM OF INFORMATION ACT 1982***

**REQUEST BY:** HW

**DECISION BY:** Paul Wood  
 First Assistant Secretary  
 Corporate Division

HW

By email: [foi+request-5491-70caalaa@righttoknow.org.au](mailto:foi+request-5491-70caalaa@righttoknow.org.au)

Dear HW

I refer to your email, dated 29 October 2019, seeking internal review of the decision (the **primary decision**), made on 30 September 2019 by Stephen Heskett, Assistant Secretary, Shared Services Branch, Department of the Prime Minister and Cabinet (the **Department**) in relation to your request made under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

*Copies of invoices given to the Department by AGS in respect of services rendered by AGS related to the public interest disclosure the subject of the article in the Guardian dated 26 June 2019 (available here: <https://www.theguardian.com/australia-news/2019/jun/26/whistleblower-hits-out-at-pms-department-over-pervasive-and-toxic-disregard-for-law>). The names and personal information of anyone contained in the invoices are to be excluded.*

*The hourly rates charged (and the corresponding time spent by AGS lawyers) as mentioned in relevant documents are to be redacted but only on the basis that the total amount listed on each relevant invoice remains unredacted.*

The primary decision refused access, in full, to nine documents located within the scope of your request (the **requested documents**), on the basis that they contained information that was exempt under:

- section 42 of the FOI Act (legal professional privilege);
- section 45(1) of the FOI Act (material obtained in confidence);
- section 37(2) of the FOI Act (documents affecting enforcement of law);
- section 47E(c) of the FOI Act (certain operations of agencies – management of personnel);
- and
- section 47E(d) of the FOI Act (certain operations of agencies – proper and efficient conduct).

Under section 54(2) of the FOI Act, an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

### **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 FOI Act.

### **Internal review decision**

My internal review decision is to:

- set aside the primary decision in respect of parts of the requested documents; and
- affirm the primary decision in respect of the remaining parts of the requested documents.

The practical effect of my internal review decision is to release the requested documents, in part, on the basis that they contain information that is exempt under:

- section 42 of the FOI Act (legal professional privilege);
- section 45(1) of the FOI Act (material obtained in confidence);
- section 37(2) of the FOI Act (documents affecting enforcement of law);
- section 47E(c) of the FOI Act (certain operations of agencies - management of personnel); and
- section 47E(d) of the FOI Act (certain operations of agencies – proper and efficient conduct).

The version of the requested documents being released to you under this internal review decision is **attached**.

In reaching my internal review decision, I have had regard to:

- the terms of your FOI request;
- the documents relevant to the FOI request;
- the primary decision;
- your request for internal review;
- the FOI Act;
- the *'Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act'* (the FOI Guidelines); and
- the *Public Interest Disclosure Act 2013* (Cth) (the '**PID Act**').

### **Reasons**

I have carefully reviewed the requested documents which were found to be exempt in the primary decision.

In relation to parts of the requested documents, I have decided that they contain material that is now appropriate for release.

In relation to the remainder of the material within the requested documents, I am satisfied with the primary decision findings and reasons underpinning those findings (namely, that they are exempt

from release). Accordingly, I adopt and affirm those findings and reasons as my own for the purposes of this internal review. I have therefore affirmed the primary decision over those parts of the requested documents.

### **Deletion of exempt or irrelevant information (section 22 of the FOI Act)**

Section 22 of the FOI Act provides that exempt or irrelevant information may be deleted from a copy of a document, and access granted to such an amended copy where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

In accordance with the Department's policy as advised to you on 12 November 2019, I find that the following information in the requested documents, where ever it occurs, is irrelevant to the FOI request:

- any person's signature;
- the names and contact details of Australian Public Service officers not in the Senior Executive Service (SES);
- mobile or direct numbers of SES officers; and
- the names and contact details of Ministerial staff at a level below Chief of Staff.

In accordance with section 22 of the FOI Act, I have excluded the parts of the requested documents that contain the above details, where relevant.

### **Publication of the documents**

Under section 11C of the FOI Act, the Department will make arrangements to publish the document released to you as part of my internal review on the Department's FOI Disclosure Log.

### **Review rights**

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

### **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 review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/foi-complaints>.



Paul Wood  
First Assistant Secretary  
Corporate Division

28 November 2019