



Australian Government
Attorney-General's Department

Our ref: FOI19/158 & 159; CM19/4762

23 October 2019

Ms Natalie O'Brien
2 Holt Street
Surry Hills NSW 2010

By email: natalie.obrien@news.com.au

Freedom of Information Request FOI19/158 & 159 – Internal Review Decision

1. The purpose of this letter is to advise you of my decision following your request under the *Freedom of Information Act 1982* (FOI Act) for internal review of the Attorney-General's Department's decision of 13 September 2019.

Your Request

2. On 15 July 2019, you requested access to:

'...any papers relating to the recruitment of the chief executive officer including but not limited to:

- *the information package provided to for applicants about selection criteria;*
- *the number of applicants to the first and second advertisement for the recruitment of the CEO;*
- *how many of those applicants had a top level management role with law enforcement agencies with telephone intercept powers;*
- *how many of those applicants with top law enforcement backgrounds received an interview;*
- *any record of why those people did not receive an interview;*
- *how many applicants were interviewed;*
- *any record of how the contact person in July 2017 for that CEO role became an applicant;*
- *any records of how job applicants were informed that the contact person had become a job applicant;*
- *copy of the subsequent advertisement re-advertising the CEO role;*
- *any briefings or correspondence with the minister's office about how to manage the changed role of the contact person for the job becoming an applicant for the job.*
- *any briefings to the minister or other government departments about the appointment of the CEO in 2017;*
- *any records of complaints about the appointment of the CEO in November 2017;*

The time frame is from June 1, 2017 until December 31, 2017.

I do not require personal details, such as names or email or physical addresses or telephone contacts.

3. On 16 July 2019 the department accepted transfer of your request from AUSTRAC and on 22 July 2019 the department accepted transfer of the same request from the Department of Home Affairs. On 29 July 2019 the department acknowledged your request.
4. On 13 September 2019, the department made a decision in response to your request. In particular, the department identified 10 documents, providing access to two documents in full, granting access in part to five documents and refusing access to three documents.
5. On 23 September 2019, you requested internal review of that decision. In particular, you stated:

'...I would like to request a review under section 54 of the FOI act of the decision and the documents received in relation to the FOI requests No FOI19/158 and FOI 19/159.

I don't believe my FOI request was fully addressed and the documents requested were not identified, included or released.

In particular I requested information about how many applicants had top level enforcement backgrounds; that was not addressed.

How many applicants with a law enforcement background were given interviews? That was not addressed.

Any record of how the contact person became an applicant. That was not addressed.

There is also no document which shows why the suitable applicant was not appointed.'

6. I address each of your statements below.
7. I note that on 24 September 2019 you separately submitted a list of questions to the department on an administrative basis which address a number of the queries set out in your application for internal review. I have reviewed the answers to the questions you submitted on 24 September and have referred to them in my reasons below where they relate to this internal review decision.

My Decision

8. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests made to the department.
9. In making my decision, I have taken the following material into account:
 - the terms of your request
 - the content of the documents identified as within scope of your request
 - the provisions of the FOI Act
 - the department's decision under the FOI Act
 - the terms of your internal review request, and

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).
10. I have also considered your statement in relation to the internal review request.
 11. I have reviewed documents falling within the terms of your original request and internal review request. Searches of the department's record have also been undertaken.

Applicants with top level enforcement backgrounds and applicants with a law enforcement background who were given interviews

12. In your request for internal review, you stated *'In particular I requested information about how many applicants had top level enforcement backgrounds; that was not addressed'*. You also stated *'How many applicants with a law enforcement background were given interviews? That was not addressed'*. I am of the view that the documents which relate to these statements contain personal information and deliberative matter that is not in the public interest to release.

Section 47F – Personal Information

13. Subsection 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).
14. The term 'personal information' is defined in the FOI Act as having the same meaning as in the *Privacy Act 1988 (Cth)*, that is:
 - (a) *whether the information or opinion is true or not; and*
 - (b) *whether the information or opinion is recorded in a material form or not.*
15. The FOI Guidelines relevantly provide that personal information can include a person's name, address, telephone number and date of birth (paragraph 6.130).
16. In the decision of 13 September 2019, you were advised that certain material containing personal information was conditionally exempt under section 47F.
17. I have considered the relevant material and am of the view it relates to personal and professional information of applicants that had been provided to the assessment panel for consideration and am satisfied that is not appropriate for public release.
18. In addition, the information was provided by the applicants on a confidential basis and, if released, the documents would reveal the identity and other personal details of that individual and result in the unreasonable disclosure of personal information.
19. Accordingly, I affirm the decision that the information is conditionally exempt under section 47F of the FOI Act and that disclosure would be contrary to the public interest. While I have affirmed the decision in relation to access to the documents, I note the department has provided you with an answer to your questions above on an administrative basis.

Section 47C – deliberative process

20. Subsection 47C(1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

21. The FOI Guidelines state that ‘deliberative process’ refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes (paragraph 6.59). They also indicate that the deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth. The functions of an agency are usually found in the Administrative Arrangements Order or the instrument or Act that established the agency.
22. I have considered the relevant material and have decided that the material identified as falling within the scope of your request contains deliberative matter. This material relates to opinions and recommendations obtained during the course of the deliberative processes of the assessment panel, namely the advice, recommendations, interim decisions or deliberations recorded for the selection process of candidates for the position concerned.
23. I consider that it is vital that the department continue to undertake these deliberations with frankness, candour and completeness. This requires the material to remain in-confidence so the department can continue to determine suitable candidates for appointment to similar roles. This selection process enables an assessment panel to provide a high quality, fit-for-purpose assessment of candidates for appointment to an agency. A release of the documents could reasonably be expected to inhibit the department’s ability to produce similar documents in the future.
24. Accordingly, I affirm the decision that the information is conditionally exempt under section 47C of the FOI Act and that disclosure would be contrary to the public interest. While I have affirmed the decision in relation to access to the documents, I note the department has provided you with an answer to your questions above on an administrative basis.

Any record of how the contact person became an applicant and why the suitable applicant was not appointed

25. In your request for internal review, you stated ‘*Any record of how the contact person became an applicant. That was not addressed*’. You also stated ‘*There is also no document which shows why the suitable applicant was not appointed*’.
26. Document 1 of the decision package released to you on 13 September, being a submission to the then Minister for Justice, sets out the Minister’s options as to how he could proceed with the appointment process. Relevant to your query, the submission makes clear that the Minister had the option of running an open selection process or appointing an ‘eminent person’. The Minister ran an open selection process from which he identified a preferred candidate. When that candidate was no longer available for appointment, he exercised his discretion to appoint an ‘eminent person’, being Ms Rose.

27. In addition, I note that the decision letter of 13 September 2019 stated the following:
- ...the (former) Minister for Justice recommended the appointment of one of the candidates found highly suitable by the panel. However, before the proposal could be finalised, the candidate was no longer available for appointment.*
- The Minister for Justice subsequently exercised his option to appoint an eminent person.*
28. I consider that document 1 and the statement in the letter of 13 September 2019 extracted in paragraph 29 sufficiently address your queries above.
29. Further to this, searches of the department's records have been undertaken and I have reviewed documents falling within the terms of your request. No documents have been located that fall within the scope of your request in this regard. Accordingly, I am satisfied that the department does not hold any record of the deliberative process undertaken by the then Minister for Justice.

Conclusion

30. For the reasons set out above, I have decided to affirm the original decision of 13 September 2019.

Additional Information

31. Your review rights under the FOI Act are set out at **Attachment A** to this letter.

Questions about this decision

32. If you wish to discuss this decision, the FOI case officer for this matter is Fiona, who can be reached on (02) 6141 6666 or at foi@ag.gov.au.

Yours sincerely



Helen Daniels
Chief Operating Officer

Attachments

Attachment A: Review Rights – Information Commissioner Review



Attachment A

FOI Review Rights – Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review of this decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and can be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>

email: enquiries@oaic.gov.au

post: GPO Box 5218, SYDNEY NSW 2001

in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website.

Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.