



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2019/343

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Alan Cole

DECISION BY: Ms Alison Green
Assistant Secretary
Protocol and International Visits Branch

Dear Mr Cole

I refer to your email of 5 November 2019 to the Department of the Prime Minister and Cabinet (the **Department**) in which you made a request under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

Regarding the prime minister's visit to the United States for a state visit and to attend the UN general assembly in September 2019

- 1. List of the delegation members travelling with the prime minister and if they just went to Washington, New York or both and the dates they travelled. If you plan to withhold names just there titles/position.*
- 2. Documents listing the name of the hotel the delegation stayed in and number of rooms reserved in Washington and New York*
- 3. Schedule of the Prime Minister in New York*

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision

The Department has identified three documents relevant to the scope of your request (the **requested documents**).

I have decided to refuse access to:

- Document 1, in full, on the basis that it contains information that is exempt under:
 - section 33(a)(i) of the FOI Act (security of the Commonwealth)
 - section 47C of the FOI Act (deliberative matter); and

- section 47E(d) of the FOI Act (operations of an agency – proper and efficient conduct);
- Document 2, in full, on the basis that it contains information that is exempt under:
 - section 33(a)(i) of the FOI Act (security of the Commonwealth);
 - Section 47E(d) of the FOI Act (operations of an agency – proper and efficient conduct); and
 - section 47G(1) of the FOI Act (business information);
- Document 3, in full, on the basis that it contains information that is exempt under:
 - section 33(a)(i) of the FOI Act (security of the Commonwealth);
 - section 33(a)(iii) of the FOI Act (international relations of the Commonwealth);
 - section 47C of the FOI Act (deliberative material);
 - section 47E(d) of the FOI Act (operations of an agency – proper and efficient conduct);
 - section 47F of the FOI Act (personal information); and
 - section 47G(1) of the FOI Act (business information).

The Schedule at Attachment A contains further information.

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

- the terms of your request;
- the content of the requested documents;
- the FOI Act;
- advice from the Department’s FOI advisers; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Section 33(a)(i) of the FOI Act - material affecting national security

Section 33(a)(i) of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to:*
 - (i) *the security of the Commonwealth;*

The FOI Guidelines state that:

‘The term ‘security of the Commonwealth’ broadly refers to:

- (a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests*
- (b) *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth’s international relations.’¹*

The FOI Guidelines further state that:

‘The meaning of ‘damage’ has three aspects:

¹ [Ibid](#) paragraph 5.29.

- i. *that of safety, protection or defence from something that is regarded as a danger. The Administrative Appeals tribunal has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. *The means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. *The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*²

I am satisfied that disclosure of material contained within the requested documents would, or could be reasonably expected to, cause damage to Australia's security if it were disclosed. Specifically, I have formed the view that:

- material contained within Documents 1 and 3 is exempt under section 33(a)(i); and
- the entirety of Document 2 is exempt under section 33(a)(i).

Section 33(a)(iii) of the FOI Act – damage to the international relations of the Commonwealth

Section 33(a)(iii) of the FOI Act provides that a document is exempt if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

Paragraph 5.28 of the FOI Guidelines states that:

*'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.*³

Paragraphs 5.36-5.37 of the FOI Guidelines also state that:

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them...

*The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship.*⁴

Document 3 contains information pertaining to a state visit. I am satisfied that material contained within Document 3 is exempt under section 33(a)(iii) of the FOI Act, on the

² [Ibid](#), paragraph 5.31.

³ [Ibid](#), paragraph 5.28

⁴ [Ibid](#), paragraph 5.36-5.37

grounds that disclosure of the material in question would, or could reasonably be expected to, cause damage to Australia's international relations.

Section 47C of the FOI Act – deliberative matter

Section 47C of the FOI Act provides that:

- (1) *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:*
- (a) *an agency; or*
 - (b) *a Minister; or*
 - (c) *the Government of the Commonwealth.*

Paragraph 6.59 of the FOI Guidelines provides that:

'Deliberative process' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.⁵

Documents 1 and 3 are draft documents, comprised of facts and recommendations that were prepared on the basis of, and for consideration of use in, Parliamentary proceedings. To the extent that Documents 1 and 3 contain factual information, that factual information is intertwined or embedded with the deliberative content, such that it is impractical to separate it.

Consequently, I am satisfied that Documents 1 and 3:

- consist entirely of information that meets the definition of “deliberative matter” within the meaning of section 47C of the FOI Act, and therefore,
- are conditionally exempt under section 47C of the FOI Act.

Section 47E(d) of the FOI Act - certain operations of agencies – proper and efficient conduct

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I am satisfied that disclosure of the information contained in Documents 1 and 3 would have a substantial adverse effect on the proper and efficient conduct of the operations of the Department, on the basis that its disclosure would inhibit the Department's ability to prepare material relevant to the Department and/or ministers' Parliamentary responsibilities. I am also satisfied that disclosure of the information contained in Document 2 would inhibit the Department's ability to organise international travel for ministers and government officials.

⁵ Australian Information Commissioner, [FOI Guidelines – Combined November 2019](#), paragraph 6.59

Therefore, I am satisfied that Documents 1, 2 and 3 are conditionally exempt under section 47E(d) of the FOI Act in full.

Section 47F of the FOI Act – personal information

Section 47F 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.

Section 47F(2) further provides that in determining whether the disclosure of personal information would be unreasonable, an agency must have regard to the following matters:

- a) the extent to which the information is well known;
- b) whether the person to whom the information relates is known to be associated with the matters dealt with in the document;
- c) the availability of the information from publicly accessible sources; and
- d) any other relevant factors.

The term ‘personal information’ has the same meaning as it has in the *Privacy Act 1988* – that is, essentially, information about an identified person or a person who can be easily identified.

The FOI Guidelines relevantly provide as follows:

‘Personal information means information or opinion about an identified individual, or an individual who is reasonably identifiable.’⁶

‘Personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.’⁷

‘The information needs to convey or say something about a person, rather than just identify them. The mere mention of a person’s name or signature may, however, reveal personal information about them depending on the context.’⁸

‘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 s11A(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.’⁹

‘Key factors for determining whether disclosure is unreasonable include:

- (a) the author of the document is identifiable*
- (b) the documents contain third party personal information*
- (c) release of the documents would cause stress on the third party*
- (d) no public purpose would be achieved through release.’¹⁰*

⁶ [Ibid](#), paragraph 6.128

⁷ [Ibid](#), paragraph 6.130

⁸ [Ibid](#), paragraph 6.136

⁹ [Ibid](#), paragraph 6.138

¹⁰ [Ibid](#), paragraph 6.142

After due consideration of the above, I have decided that material contained within Document 3 includes personal information for the purposes of the FOI Act. I have also decided that its disclosure would be an unnecessary and unwarranted invasion of privacy. I have reached the latter conclusion after deciding that it is not information which is well known, the person/s concerned is not known to be associated with the matters in question and the information is not available from other publicly accessible sources.

After consideration of the above, I have formed the view that information contained within Document 3 is conditionally exempt under section 47F of the FOI Act.

Section 47G(1) of the FOI Act - business information

Section 47G(1) of the FOI Act provides that:

(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.*

Documents 2 and 3 contain the business information of commercial entities. I consider that such business information is conditionally exempt from release, as its disclosure would, or could reasonably be expected to, involve the unreasonable disclosure of business information of persons and organisations. Consequently, I am satisfied that:

- Document 2, in its entirety, is conditionally exempt under section 47G of the FOI Act;
- material contained within Document 3 is conditionally exempt under section 47G of the FOI Act.

Public Interest Test – sections 47C, 47E(d), 47F and 47G of the FOI Act

Section 11A(5) of the FOI Act provides that a conditionally exempt document must nevertheless be disclosed to the applicant unless its disclosure would, on balance, be contrary to the public interest.

In determining whether disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors in favour of disclosure against the factors against disclosure.

Section 11B(4) of the FOI Act sets out the following factors that the decision-maker must *not* take into account when deciding whether access to the document would be contrary to the public interest:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- b) access to the document could result in any person misinterpreting or misunderstanding the document;
- c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- d) access to the document could result in confusion or unnecessary debate.

I have not taken any of the above factors into account in making my decision.

Factor in favour of disclosure

The particular factor in favour of disclosure in this case is that disclosure would promote the objects of the FOI Act.

Factors against disclosure

The FOI Act does not provide for any public interest factors weighing against disclosure that decision makers may consider. However, in determining whether disclosure would be contrary to the public interest, I have had regard to the FOI Guidelines. The FOI Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the case, may be against disclosure.

I consider that the factors against disclosure in this case are that:

- disclosure of the conditionally exempt information would inhibit the ability of the Department to effectively serve and support the Prime Minister and Cabinet in the discharge of their duties and responsibilities.
- disclosure may also inhibit Departmental officers in including frank and comprehensive advice and material in briefings and correspondence within the Department.
- could reasonably be expected to prejudice the protection of an individual's right to privacy;
- could reasonably be expected to harm the interests of an individual, or a group of individuals;
- may adversely affect the legitimate business/commercial activities of one or more entities.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the conditionally exempt information in the requested documents would be contrary to the public interest.

Section 22 of the FOI Act - Deletion of irrelevant matter

Section 22 of the FOI Act provides that irrelevant information may be deleted from a copy of a document. In accordance with the Department's policy, as advised to you on 28 November 2019, I find that the following information wherever it occurs is irrelevant to the FOI request:

- the names and contact details of Australian Public Service officers not in the Senior Executive Service (SES);
- the names and contact details of Ministerial staff at a level below Chief of Staff.

I further find that other material contained within Document 1 and Document 3 is also irrelevant to the FOI request.

Processing and access charges

I have decided not to impose processing charges in respect of your FOI request.

Review rights

Information about the applicant's rights of review can be found on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this request. 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/reviews-and-complaints/make-an-foi-complaint/>.



Alison Green
Assistant Secretary
Protocol and International Visits Branch

20 January 2020

FOI REQUEST: FOI/2019/343

SCHEDULE OF DOCUMENTS



FOI

Document	Decision
1	Exempt in full under section 33(a)(i), section 47C and section 47E(d) of the FOI Act.
2	Exempt in full under section 33(a)(i), section 47E(d) and section 47G(1) of the FOI Act.
3	Exempt in full under section 33(a)(i), section 33(a)(iii), section 47C, section 47E(d), section 47F and section 47G of the FOI Act.