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FOI/OMIA/1920/001

**FREEDOM OF INFORMATION ACT 1982**

**REQUEST BY: Mr Tony Williams  
Right to Know**

**DECISION BY: Mike Fordham  
Chief of Staff  
Hon Ken Wyatt AM MP  
Minister for Indigenous Australians**

Dear Mr Williams,

I refer to your request dated 19 November 2019 under the *Freedom of Information Act 1982* (Cth) (FOI Act) to the Office of the Minister for Indigenous Australians (the Minister's Office) for access to the following documents:

- '1) Any request for information from the Minister for Indigenous Australians or his Office on the exploitation of Indigenous artists.*
- 2) Any information provided by the National Indigenous Australians Agency to the Minister for Indigenous Australians or his office on the exploitation of Indigenous Australians.*
- 3) Any record of action taken by the Minister for Indigenous Australians to address the exploitation of Indigenous artists including any letters to the Minister for Communications and the Arts or the Prime Minister.*
- 4) Any consultation the Minister for Indigenous Australians has undertaken with the Indigenous Advisory Council on the exploitation of Indigenous artists.'*

**Authorised decision-maker**

I am authorised to make this decision in accordance with arrangements approved by Minister Wyatt under section 23 of the FOI Act.

**Searches for relevant documents**

The Minister's Office has undertaken searches of its relevant records and identified six (6) documents as falling within the scope of your FOI request (the requested documents).

**Matters Taken Into Account**

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

- the terms of your request;
- the content of the requested document;
- consultations with the NIAA's FOI advisers;
- the provisions of the FOI Act; and
- Guidelines made by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

**Decision**

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My decision is to release three (3) documents in full and three (3) documents in part. The reasons for my decision are set out below.

### ***Section 47F of the FOI Act – personal privacy***

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.

The term ‘personal information’ has the same meaning as it has in the *Privacy Act 1988* – that is, essentially, information or an opinion about an identified person or a person who can be easily identified, whether that information or opinion is true or not.

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

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

Paragraph 6.142 of the FOI Guidelines further provide key factors to consider when determining whether disclosure would be unreasonable, being:

- the author of the document is identifiable
- the documents contain third party information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

Some information contained in Documents 1-3, as identified in the Schedule of documents, include the names and contact details of third parties. These details, in this context, are not widely known outside those associated with the matter, and would provide no tangible public benefit.

Furthermore, through the consultation process, the affected third parties made submissions contended these details should not be disclosed on personal privacy grounds.

The consideration of whether information would be ‘unreasonable’ to disclose, the Administrative Appeals Tribunal (AAT) further noted in *Re Chandra and the Minister of Immigration and Ethnic Affairs (Re Chandra)* that:

*‘all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent.’*

After consideration of the above, and consideration of the submissions of the affected third parties, I am satisfied that some of the information in Documents 1-3 is conditionally exempt under section 47F of the FOI Act.

Where a document is assessed as conditionally exempt, access must be given subject to the public interest test detailed in section 11A(5) of the FOI Act.

### **Public Interest**

Section 11A(5) of the FOI Act provides that the requested document must 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:



- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- 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
- 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.

*Factors 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 factors against disclosure in relation to section 47F of the FOI Act are, in my view, that disclosure:

- would be damaging to the persons concerned;
- would be an unnecessary intrusion into, and breach of, the person's privacy; and
- would not create any tangible, compensating benefit to the public.

After careful consideration of all relevant public interest factors I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. I am therefore of the view that disclosure of some of the information contained in the requested documents would, on balance, be contrary to the public interest at this time.

Accordingly, I am satisfied that some of the information contained in Documents 1-3, as identified in the Schedule of documents, is exempt under section 47F of the FOI Act.

**Irrelevant material**

Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, section 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions.

The relevant document contains information that does not fall within the scope of your request. It is standard policy to delete certain information in documents which are irrelevant, unless specifically requested by the applicant. You have not specifically requested any of this information, so it has been deleted from the documents accordingly. Material has also been deleted from the documents that does not relate to the substance of your request.

**Processing and access charges**

I have decided not impose charges for this FOI request.

**Publication**

Where an applicant is provided access to a document, section 11C of the FOI Act requires the Minister's Office to publish the document to members of the general public within ten (10) business days of providing the applicant with access to the document. Documents are published on National Indigenous Australians Agency Disclosure Log at <https://www.niaa.gov.au/foi/agency-foi-disclosure-logs>.

**Review rights**

If you disagree with your FOI decision, you can ask for the decision to be reviewed.

Information Commissioner Review

The OAIC is an independent office that can review the decisions of agencies under the FOI Act.





You can ask the OAIC to review the NIAA's decision. You do not need to seek an internal review from the NIAA before seeking a review from the OAIC; however, going through the NIAA's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.

The OAIC review process is free. You must apply to the OAIC within 60 days of being given notice of the decision. You must apply in writing, and further details are available on the OAIC website: [www.oaic.gov.au](http://www.oaic.gov.au)

If you cannot access these websites, please contact the FOI Coordinator (contact details at the end of this notice), and further details will be provided to you.

### **Complaint rights**

You may make a complaint to the Information Commissioner about the actions of the Minister's Office in relation to this decision. Making a complaint about the way the Minister's Office has handled an FOI request is a separate process to seeking review of the decision.

A complaint to the Information Commissioner must be in writing and identify the agency in respect of which the complaint is made. The Office of the Australian Information Commissioner (OAIC) may be contacted by phone (1300 363 992), email ([enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)) or by letter (GPO Box 2999, Canberra ACT 2601).

Further information about the OAIC can be found on their website: [www.oaic.gov.au](http://www.oaic.gov.au).

### **Contact details**

If you have any questions about this decision, or the FOI process, please contact the Minister's Office

A handwritten signature in black ink, appearing to read 'Mike Fordham', with a long horizontal line extending to the right.

Mike Fordham  
Chief of Staff  
Office of the Hon Ken Wyatt AM MP  
Minister for Indigenous Australians

17 January 2020

Scope:

- "1) Any request for information from the Minister for Indigenous Australians or his Office on the exploitation of Indigenous artists.  
2) Any information provided by the National Indigenous Australians Agency to the Minister for Indigenous Australians or his office on the exploitation of Indigenous Australians.  
3) Any record of action taken by the Minister for Indigenous Australians to address the exploitation of Indigenous artists including any letters to the Minister for Communications and the Arts or the Prime Minister.  
4) Any consultation the Minister for Indigenous Australians has undertaken with the Indigenous Advisory Council on the exploitation of Indigenous artists."*

<b>Doc #</b>	<b>Date</b>	<b>Description</b>	<b>No of pages</b>	<b>Decision</b>	<b>Relevant provision</b>
1	5 November 2019	Email to third party	1-3	Release in part	Section 47F (personal information) Section 22 (irrelevant material)
2	5 November 2019	Email to third party	4-5	Release in part	Section 47F (personal information) Section 22 (irrelevant material)
3	5 November 2019	Email to third party	6	Release in part	Section 47F (personal information) Section 22 (irrelevant material)
4	6 November 2019	Email	7-8	Release in full	Section 22 (irrelevant material)
5	11 November 2019	Email	9-12	Release in full	Section 22 (irrelevant material)
6	14 November 2019	Brief	13-19	Release in full	Section 22 (irrelevant material)

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