

7 August 2020

Mr Robert Gorwa

By email: foi+request-6381-4be3cbd2@righttoknow.org.au

Dear Mr Gorwa,

Request for access to documents under the Freedom of Information Act 1982

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

I, Nicole Chew, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Original request

On 8 June 2020 you requested access to:

-All policy-making and administrative documents relating to the adoption and implementation of the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, or AVM act

-All documentation relating to the engagement with civil society and industry stakeholders in the lead up and follow up to the AVM legislation being passed, including but not limited to documents pertaining to the (a) 'summit with digital services and ISPs regarding AVM' and the (b) 'eSafety Commissioner's meetings with industry stakeholders,' both mentioned in the Commissioner's Factsheet on the AVM act published on the 24th of March.[1] These documents may include but not be limited to email correspondence, meeting minutes and agendas, draft reports and policy memos.

[1]: <https://www.esafety.gov.au/sites/default/files/2020-03/eSafety-AVM-factsheet.pdf>

Part transfer under subsection 16(1) of the FOI Act

On 16 June 2020 we notified you that parts of your request would be transferred to two other agencies under subsection 16(1) of the FOI Act.

(a) Attorney-General's Department

In relation to the part of your request:

-All policy-making and administrative documents relating to the adoption and implementation of the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, or AVM act

the subject matter of this part of the request is more closely connected with the functions of the Attorney-General's Department, as this is the Department which developed the AVM Act and which has policy responsibility for it.

Therefore, on 15 June 2020 the above part of the request was transferred to the Attorney-General's Department, which is now responsible for processing that part of the request.

(b) Transfer to the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC)

In relation to the part of your request:

All documentation relating to the engagement with civil society and industry stakeholders in the lead up and follow up to the AVM legislation being passed, including but not limited to documents pertaining to the (a) 'summit with digital services and ISPs regarding AVM'...

mentioned in the Commissioner's (sic) Factsheet on the AVM act published on the 24th of March.[1] These documents may include but not be limited to email correspondence, meeting minutes and agendas, draft reports and policy memos...

the subject matter of this part of the request referring to '(a) summit with digital services and ISPs regarding AVM' is more closely connected with the functions of DITRDC, which hosted the summit.

Therefore, on 12 June 2020 the above part of the request was transferred to DITRDC, which is now responsible for processing that part of the request.

Revised scope of the part of the request remaining with eSafety

On 16 June 2020 I spoke with you by telephone about narrowing the part of the request remaining with eSafety to ensure it did not involve a substantial and unreasonable diversion of resources that may invoke a practical refusal reason under sections 24, 24AA and 24AB of the FOI Act.

Following this informal consultation, we agreed to narrow the part of the request remaining with eSafety as follows:

All documentation relating to the eSafety Commissioner's engagement with civil society and industry stakeholders in relation to the Abhorrent Violent Material legislation in the period from 15 March 2019 to 31 May 2019, including but not limited to documents pertaining to the eSafety Commissioner's meetings with

industry stakeholders mentioned in the Commissioner's Factsheet on the AVM act published on the 24th of March.[1]

[1]: <https://www.esafety.gov.au/sites/default/files/2020-03/eSafety-AVM-factsheet.pdf>

We also agreed to exclude:

- all draft documents
- all internal correspondence within the eSafety Commissioner's Office (for example, back and forth internal emails between eSafety staff) and
- documents already published by the eSafety Commissioner on the FOI Disclosure Log.

You confirmed the revised scope of the request via email on 23 June 2020.

Outcome of search for documents

I have identified five documents which fall within the revised scope of your request.

Several documents contain personal information about identified individuals. eSafety therefore undertook third party consultation in accordance with section 27A of the FOI Act in order to provide the affected third parties with opportunities to make submissions about the application of the relevant exemption. Accordingly, the statutory time period for processing your request was extended to 7 August 2020.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents. I have decided to grant partial access to all five documents. More information, including the reasons for my decision, is set out below.

Decision and Reasons for Decision

I have decided to grant partial access to all five of the documents that fall within the scope of your request.

I have also decided that all five documents are partly exempt under section 47F of the FOI Act, which provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. The exempt information has been redacted.

Pursuant to section 22 of the FOI Act, I have decided to redact some information that is irrelevant to the scope of your request. This includes the names of public servants which I have assumed you do not require.

The attached schedule of documents provides a description of each document and my decision in relation to it. The reasons for my decision to claim exemption are set out below.

Material taken into account

I have taken the following material into account in making my decision on access:

- the FOI Act, specifically sections 11, 11A, 11B, 22, 26, 27A, 47F and Part IV Divisions 2 and 3;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines);
- the content of the documents that fall within the scope of your request; and
- the views of third parties consulted by eSafety under section 27A.

Public interest conditional exemption – Section 47F of the FOI Act – Personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person.

Personal information

‘Personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*). Some of the documents relevant to your request contain the personal information (including names, contact and employment details) of third parties.

Disclosure unreasonable

The FOI Act states that, when deciding whether the disclosure of the personal information would be ‘unreasonable’, I must have regard to four factors set out in subsection 47F(2) of the FOI Act. I have therefore considered each of these factors below:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- the availability of the information from publicly available resources; and
- any other matters that I consider relevant.

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, some of the individuals concerned are not generally known to be associated with the implementation of the AVM legislation.

I am satisfied from my own experience and the consultation responses received that the individuals involved are at risk of unwanted contact attempts which can cause distress and jeopardise their personal safety. In these circumstances, and in the absence of the consent of the relevant individuals, I consider that disclosure of their personal information would be unreasonable.

Public interest

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. In weighing the public interest I have taken into account the relevant factors favouring disclosure in subsection 11B(3), and have not taken into account any of the irrelevant factors in subsection 11B(4) of the FOI Act.

While disclosure of information is generally considered to promote the objects of the FOI Act, including informing the community of Government's operations and enhancing the scrutiny of government decision making, I consider that release of personal information in these circumstances would neither inform debate about the AVM legislation, nor promote oversight of eSafety's processes and procedures with respect to its implementation.

Conversely, disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, and to harm the interests of an individual or group of individuals.

Accordingly, I am satisfied that parts of the documents are exempt under section 47F and that disclosure would be contrary to the public interest.

Description of information released under this disclosure log (and whether released in full or part)

Five documents were released in part and exempted in part.

Additional documents which may be of interest

Your revised request excludes documents already published on eSafety's FOI Disclosure Log. However, we encourage you to review the documents in Log 7 at <https://www.esafety.gov.au/about-us/corporate-documents/freedom-of-information/disclosure-log>.

These documents were released in response to another FOI request seeking materials created between 1 January and 11 July 2019 relating to eSafety's implementation of the AVM legislation.

While the documents released in response to your request refer to meetings between eSafety and industry to discuss the AVM legislation, the documents released in response to

the request in Log 7 include correspondence that took place following these meetings.

Final assessment of charges

I have decided that you are not liable to pay a charge in respect of your request for the attached document.

Your rights of review

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to enquiries@esafety.gov.au for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and 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 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you have any questions in this regard, please contact me on 1800 880 176 or at enquiries@esafety.gov.au.

Yours sincerely,

Nicole Chew
Office of the eSafety Commissioner
Authorised decision maker pursuant to section 23(1) of the FOI Act

Attachments

1. Schedule of documents

SCHEDULE OF DOCUMENTS

Doc. No	Description of document	Date	Decision on access	Section/s relied upon
1.	Emails between Facebook and eSafety: Meeting this week	8-Apr-19	Partial Release	Sections 22, 47F
2.	Emails between Twitter and eSafety: Meeting on Wednesday	8-Apr-19	Partial Release	Sections 22, 47F
3.	Calendar entry: Meeting – Facebook / eSafety	11-Apr-19	Partial Release	Sections 22, 47F
4.	Calendar entry: Meeting – Twitter / eSafety	11-Apr-19	Partial Release	Sections 22, 47F
5.	Calendar entry: Meeting – Google / eSafety	11-Apr-19	Partial Release	Sections 22, 47F