



NATIONAL ARCHIVES OF AUSTRALIA

Our reference: 2020/1731

Sarah

foi+request-6385-48ae6b44@righttoknow.org.au

11 November 2020

Dear Sarah

YOUR FREEDOM OF INFORMATION REQUEST FOI132

I refer to your email dated 9 June 2020 seeking access to documents under the *Freedom of Information Act 1982* (the FOI Act). You requested the following information:

Documents relating to the implementation of recommendations 1 to 5 given by the ANAO (and agreed to by the NAA) in the audit of the 'Implementation of the Digital Continuity 2020 Policy' available at: <https://www.anao.gov.au/work/performance-audit/implementation-digital-continuity-2020-policy>. The date range is for documents created between 1 November 2019 to 29 May 2020, inclusive.

We apologise for the lengthy delay in response.

On 11 November 2020, the National Archives of Australia (the National Archives) applied to the Office of the Information Commissioner (OAIC) for an extension of time under section 15AC(4) of the FOI Act, in order to remove the deemed refusal of your FOI request. This request is currently being considered by OAIC and we will receive a decision in due course. Please note that the review rights outlined in Attachment C will only apply if the OAIC grants the extension of time. We will notify you accordingly.

SUMMARY OF DECISION

Searches

In my search I found 27 documents relating to the implementation of ANAO's recommendations that were within your requested date range that I have defined as being in scope. The search for documents was conducted by contacting the relevant line area, Commonwealth Information Management, within the National Archives.

Decision on access

In summary, I have decided to:

- Grant you full access to 2 documents in full;
- Grant you part access to 24 documents with some of the content removed under sections 22(1)(a)(ii) and 47C(1) of the FOI Act; and
- Refuse access to 1 document under section 47C(1) of the FOI Act.

REASONS FOR DECISION

I am authorised to make decisions under section 23(1) of the FOI Act.



Section 17 of the FOI Act – Requests involving use of computers

Document 23.1 (slides) contains comments which are not available in a discrete form in a written document. However, while the information is not available in a discrete form, it is available for extraction from document 23.1 as held by the National Archives.

Section 17 of the FOI Act relates to requests involving the use of computers and provides as follows:

Where:

a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;

it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

(ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and the agency could produce a written document containing the information in discrete form by:

the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

Although it is not a requirement of the FOI Act to produce/create a document, the National Archives has nevertheless produced a document (document 27) containing some of the information requested by you which captures the comments included in the slides in document 23.1.

Section 22(1)(a)(ii) – irrelevant/ out of scope material

Section 22(1)(a)(ii) of the FOI Act states that access to a document can be provided with the exempt or irrelevant matter deleted if it is decided *‘that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access..’*

I have assessed the information in these documents (as set out in the schedule) and I am satisfied that the content exempted is irrelevant to the scope of your request. This material does not relate to the implementation of the ANAO recommendations in the audit of the Digital Continuity 2020 Policy.

I have also removed contact points, contact details and full names of individuals both internal and external to the National Archives. After consideration I have decided that the information removed under this section would not provide further information within scope of your request.

Section 47C(1) – Public Interest conditional exemptions – deliberative processes

Section 47C(1) states 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; or a minister; or the Government of the Commonwealth.’*

Paragraph 6.58 of the FOI Guidelines states that deliberative processes are essentially the “thinking processes” of the agency: “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” (paragraph 6.59).

I consider that the information in documents exempted from release under section 47C(1) (refer to schedule at Attachment A) is deliberative/ in draft form, not finalised and not in the public domain. The documents also contain opinion and deliberations prepared or recorded in the course of, or for the purpose of, the deliberative processes involved in the functions of the National Archives. Essentially, the documents show the deliberation process leading to agency decisions. Accordingly, I have decided that the information is conditionally exempt under section 47C(1) of the FOI Act.

Public Interest Test – section 11A(5) of the FOI Act

When a document is conditionally exempt, the public interest test must be considered.

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act
- inform debate on a matter of public importance
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

Deliberative processes – s 47C

In favour of promoting the objectives of the FOI Act I have released finalised documents from the National Archives. I have not released draft/deliberative content in these documents as the disclosure of this information would not outweigh the risks of harm to the National Archives' functions that could be reasonably expected if the information was released.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

MISCELLANEOUS

I note that documents 3, 5, 11 and 21 contain information compiled from the agencies that attended roundtable discussions. Some or all of these comments are not attributed to any particular person or agency. Accordingly, I note that the issues raised in the documents may not be reflective of all persons or agencies in attendance.

RELEVANT MATERIALS

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- advice from departmental officers with responsibility for matters relating to the document to which you sought access
- advice from external Commonwealth government agencies relating to some of the documents to which you sought access
- the FOI Act; and
- the Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

CHARGES

Section 29 of the FOI Act authorises an agency or Minister to impose a charge for providing access to a document.

In this case, it has been decided that charges will not be imposed.

REVIEW RIGHTS

See Attachment C for more information about your rights to seek a review of this decision (pending OAIC's approval of our section 15AC extension request).

If you have any queries about this notice, please contact me in writing via foi@naa.gov.au.

Yours Sincerely,

Helen Athanasiadis
Manager – Integrity (Legal Policy and Compliance)
Authorised FOI Decision Maker



NATIONAL ARCHIVES OF AUSTRALIA

ATTACHMENT A – SCHEDULE OF DOCUMENTS

Document no.	Date	Size	Description	Decision	Exemption/irrelevant	Comment
1	22/10/2019	8 pages	R1047922019 – Digital continuity 2020 – Agency Implementation Support – Project Management Plan	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope.	Created in October but approved and finalised in December
2	04/11/2019	1 page	R1102482019 – Round Table Discussion at National Archives of Australia - Agenda	Full Release		
3	14/11/2019	3 pages	R1147592019 - Note For File - Roundtable session 1 with Parliamentary Services, Australian Maritime Safety Authority and the Royal Australian Mint, 14 November 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope. s 47C(1) – deliberative material	
4	21/11/2019	1 email	R1166942019 - Summary of agency feedback as of 20 November 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope. s 47C(1) – deliberative material.	
5	28/11/2019	3 pages	R1195282019 - Note For File - Roundtable session 3 with Finance, Treasury, Environment, National Gallery, Commonwealth Ombudsman and Foreign Affairs and Trade, 28 November 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope. s 47C(1) – deliberative material	
6	10/12/2019	3 email	R1232382019 - Approving the DC2020 Implementation Support Program, 10 December 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope.	



7	7/01/2020	1 email	R10102020 - Outcomes of consultation on DC2020 implementation, summary report, 7 January 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope.	
7.1	18/12/2019	14 pages	R1257542019 – DRAFT Digital Continuity 2020 – Agency Implementation Support Program: Summary report on stakeholder consultation – 18 December 2019	Full release		Attachment to Document 7
8	9/01/2020	2 pages	R17102020 - DC2020Y - Requiredness of Targets and Pathways	Partial Release	s 47C(1) – Deliberative processes.	
9	17/01/2020	1 email	R58712020 - Request for comments and feedback on 'DC2020 - Requiredness of Targets and Pathways', 17 January 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope.	
10	02/12/2019	2 pages	R1231892019 - Note for File - Teleconference with Administrative Appeals Tribunal (AAT), 10 December 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope. s 47C(1) – deliberative material.	
11	06/12/2019	3 pages	R1224662019 - Note For File - Roundtable session 4 with Health, AFP, AEC and Safe Work Australia, 5 December 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope. s 47C(1) – deliberative material.	
12	04/02/2020	10 pages	R105702020 - Digital Continuity 2020 Policy - Communication & Stakeholder Engagement	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
13	06/02/2020	12 spreadsheets	R126652020 - Digital Continuity 2020 Policy - Implementation - Risk assessment	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
14	11/02/2020	3 emails – 2 attachments	R131492020 - revised 'Communication and Stakeholder Engagement Plan 2020' and 'Risk Assessment', 11 February 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	Attachments are duplicates of Documents 12 and 13 respectively.
15	19/02/2020	8 pages	R157852020 - DRAFT - DC 2020 Policy Implementation - Risk Management Plan	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
16	19/02/2020	1 email – 1 attachment	R158152020 - DC2020 Implementation Agency Support Program: Key findings from the discussions - Email to program participants, 19 February 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	Attachment is duplicate of Document 18
17	19/02/2020	2 emails	R159392020 - DC2020 Implementation Agency Support Program: Key findings from the discussions -	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
18	24/02/2020	14 pages	R168232020 - Summary Report on Stakeholder Engagement, December 2019	Full Release		
19	25/02/2020	3 pages	R175342020 - Brief for ADG Collection Management - DC2020 Implementation Targets and Pathways	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	

20	05/03/2020	1 email	R208712020 - "DC2020 Agency Implementation Support Program - Next steps', 5 March 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
21	03/03/2020	1 email	R198482020- advising the ADG has approved the Brief on DC2020 Targets, 3 March 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
21.1	27/02/2020	2 pages	Attachment to Document No. 1 – Implementation of the DC2020 Policy brief	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	Attachment to Document 21
22	10/02/2020	2 emails	R131482020 - Comments on the 'Communication Plan 2020', 10 February 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
23	31/01/2020	2 emails	R99452020 - Slides on roundtable consultation with agencies (for GAIN forum on 4 February), 31 January 2020	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
23.1	04/02/2020	10 slides	Attachment to document No. 23.1 – Roundtable consultation with agencies- slides.	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	Attachment to Document 23
24	18/12/2019	1 email	R1257542019 - Comments on draft 'Summary report on stakeholder consultation', 18 December 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
24.1	16/12/2019	14 pages	Attachment to Document No. 24 – Summary report on stakeholder consultation for DC2020	Partial Release	s 47C(1) – deliberative material	
25	13/12/2019	1 page	R1242942019 - Draft summary report on agency consultations, 13 December 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope	
25.1	13/12/2019	13 Pages	Attachment to Document No. 25 – DRAFT Summary report on stakeholder consultation for DC2020	Full Release		
26	21/11/2019	1 email	R1166942019 - Summary of agency feedback as of 20 November 2019	Partial Release	s 22(1)(a)(ii) – irrelevant /out of scope. s 47C(1) – deliberative material.	
27	04/02/2020	2 pages	Attachment to document No. 23.1 – Roundtable consultation with agencies slides – comments on draft presentation.	Full exemption	s 47C(1) – deliberative material.	Comments/ attachment to Document 23.1 Document created by National Archives (s 17 of the FOI Act) to capture comments on the draft presentation that were otherwise not visible when converted to PDF.

ATTACHMENT B – RELEVANT LEGISLATION

Section 22 - Deletion of exempt matter or irrelevant material

- (1) Where:
 - (a) an agency or Minister decides:
 - (i) not to grant a request for access to a document on the ground that it is an exempt document; or
 - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and
 - (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:
 - (i) would not be an exempt document; and
 - (ii) would not disclose such information; and
 - (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy;
the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.
- (2) Where access is granted to a copy of a document in accordance with subsection (1):
 - (a) the applicant must be informed:
 - (i) that it is such a copy; and
 - (ii) of the ground for the deletions; and
 - (iii) if any matter deleted is exempt matter because of a provision of this Act—that the matter deleted is exempt matter because of that provision; and
 - (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him or her a notice in writing in accordance with that section.

Section 47C Public interest conditional exemptions—deliberative processes

General rule

- (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.

Exceptions

2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons

ATTACHMENT C – REVIEW RIGHTS

Your rights to seek review of a decision made under the *Freedom of Information Act 1982*

If you do not agree with this decision, you may choose to exercise your review rights in the following ways:

- Request the National Archives of Australia to conduct an internal review of the decision. If you disagree with the National Archives of Australia's internal review decision, you may then apply to the Office of the Australian Information Commissioner (OAIC) for a review of that decision; or
- Apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of the decision. However, we do encourage you to seek internal review as a first step as it may provide a more rapid resolution for your concerns. If you are dissatisfied with the Information Commissioner's decision, you may apply to the Administrative Appeals Tribunal for a review of the Commissioner's decision.

INTERNAL REVIEW OF DECISION BY THE NATIONAL ARCHIVES OF AUSTRALIA (NATIONAL ARCHIVES)

Pursuant to section 54 of the FOI Act, you have the right to apply to the Archives for an internal review of the decision. A different officer from the one who made the original decision will conduct the review. The reviewer will make a fresh decision.

If the decision has been made by the Director-General of the Archives, you do not have the option to request an internal review under the FOI Act. You will need to apply for a review of the decision by the Information Commissioner (see below).

You do not have to complete a special form in order to request an internal review. However, your application for an internal review must be made in writing, and lodged within 30 days after the day on which you are notified of the decision. It is desirable (but not essential) that you outline the reasons why you are dissatisfied with the decision in your application for internal review. There is no cost attached to an application for internal review.

An application for internal review should be directed to:

FOI Coordination Officer
National Archives of Australia
PO Box 4924
Kingston ACT 2604
Email: foi@naa.gov.au

REVIEW OF DECISION BY THE INFORMATION COMMISSIONER

The Information Commissioner is an independent office holder who is authorised to review decisions of agencies and Ministers made under the FOI Act.

You do not have to request an internal review of a decision made under the FOI Act before making an application for review to the Information Commissioner (but you may do so if you wish).

There is no cost associated with making an application for review by the Information Commissioner.

If you are requesting a review of a decision to refuse access to documents, to impose a charge or to refuse to amend a document, you must make an application in writing, to the Information Commissioner, within 60 days of being notified of the decision.

An application for review by the Information Commissioner can be lodged online, via email, post or in person. An application for review by the Information Commissioner can be submitted by:

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

Fax: 02 9284 9666
Email: enquiries@oaic.gov.au

Your application should include a copy of the decision to which your application relates. You should also set out the reasons why you disagree with the decision.

After reviewing a decision, the Information Commissioner must do one of the following:

- set the decision aside and substitute his own decision for that of the decision under review;
- affirm the decision, or
- vary the decision.

Further information about the Information Commissioner's review is available at www.oaic.gov.au.

REVIEW OF DECISION BY THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

The AAT is an independent body authorised to review certain decisions on their merits and, where the AAT decides it is appropriate, to substitute its own decision for that of the decision under review.

If you are not satisfied with the decision of the Information Commissioner, you are entitled to make an application to the AAT for a review of that decision. An application for review must be in writing and lodged within 28 days of being notified of the Commissioner's decision. If you have good reason for not meeting this timeframe, you can write to the AAT and request an extension of time in which to lodge your application. Your request for an extension should set out the reasons why the application was not made within the 28 day period.

An application fee may apply if you are requesting a review of a FOI decision as listed in section 22 of the [Administrative Appeals Tribunal Regulation 2015](#). Further information is available from the AAT's website www.aat.gov.au.

An application to the AAT for a review of the Information Commissioner's decision can be made using an online form available from the AAT's website <http://www.aat.gov.au/applying-for-a-review> or should be directed to:

Administrative Appeals Tribunal
GPO Box 9955
(in your capital city)

FURTHER QUESTIONS

If you have any questions about your review rights, please contact FOI Coordination Officer at foi@naa.gov.au.