



## Australian Government

### Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI

FOI/2020/152

#### ***FREEDOM OF INFORMATION ACT 1982 (Cth)***

**REQUEST BY:** Trav S

**DECISION BY:** Peter Rush  
Assistant Secretary  
Parliamentary and Government Branch

By email: [foi+request-6416-0582b23b@righttoknow.org.au](mailto:foi+request-6416-0582b23b@righttoknow.org.au)

Dear Trav S

I refer to your email, dated 19 June 2020 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:

*We seek information withheld via Section 47C redactions in PMC's 19 April 2004 brief to the Minister Assisting the Prime Minister regarding the humanitarian overseas service medal for Iraq.*

#### **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 Act.

#### **Document in scope**

One document has been identified as containing the information you have requested (the **requested document**).

#### **Decision**

I have decided that the requested document, being deliberative, is conditionally exempt under section 47 of the FOI Act. However, I consider that its disclosure would not be contrary to the public interest.

Accordingly, I have decided to release the requested document, in full, with irrelevant material deleted under section 22 of the FOI Act. The document being released to you is **attached**.

In making my decision, I have considered the following:

- the terms of your request;
- the provisions of the FOI Act; and
- The Guidelines made by the Australian Information Commissioner issued under section 93A of the FOI Act (the **FOI Guidelines**).

## **Reasons for the Decision**

### ***Section 47C of the FOI Act – deliberative processes***

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.*

The FOI Guidelines state that:

*‘Deliberative matter’ is a shorthand term for ‘opinion, advice and recommendation’ and ‘consultation and deliberation’ that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words ‘opinion, advice or recommendation, consultation or deliberation’.<sup>1</sup>*

*‘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 or a proposal, a particular decision or a course of action.<sup>2</sup>*

The requested document contains deliberative matter regarding the *Humanitarian Overseas Service Medal*, prepared for the purpose of the deliberative processes involved in the functions of the Department and the Minister Assisting the Prime Minister.

I am satisfied that the deliberative matter contained within the requested document is conditionally exempt under section 47C of the FOI Act.

### ***Public Interest Test***

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.

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<sup>1</sup> FOI Guidelines, [6.63], footnotes omitted.

<sup>2</sup> FOI Guidelines, [6.59], footnotes omitted.

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.

#### *Factors in favour of disclosure*

The FOI Act sets out factors favouring disclosure which must be considered if relevant. I am satisfied 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 may, depending on the circumstances of the case, may be against disclosure.

Having regard to the conditionally exempt material, I considered the extent to which the following factors against release are relevant:

- disclosure would reduce the quality, clarity or frankness of written advice; and
- disclosure would prejudice the integrity of the decision-making process concerning the award of medals and honours.

#### *Balancing the public interest*

I have decided that the requested document, being deliberative, is conditionally exempt under section 47 of the FOI Act. However, having regard to the nature of the conditionally exempt information, I am satisfied that disclosure may promote the objects of the FOI Act and disclosure would not be contrary to the public interest.

#### **Deletion of irrelevant matter**

Section 22 of the FOI Act provides that irrelevant material may be deleted from a copy of a document, and access granted to such an amended copy where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

I have decided that it is possible for an edited copy of the requested document to be provided to you. Accordingly, the Department prepared an edited copy of the requested document, which is the document that is being released to you.

### **Processing and access charges**

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

### **Publication of the documents**

Under section 11C of the FOI Act, the Department will make arrangements to publish the document released to you on the Department's FOI Disclosure Log.

### **Review rights**

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

### **Complaint rights**

Information about your complaint rights 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/>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Rush', written in a cursive style.

Peter Rush  
Assistant Secretary  
Parliamentary and Government Branch  
20 July 2020