



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/172

FREEDOM OF INFORMATION ACT 1982 (Cth)

REQUEST BY: Trav S

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

By email: foi+request-6535-36db7e85@righttoknow.org.au

Dear Trav S

I refer to your email, dated 28 July 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* (Cth) (the **FOI Act**) in the following terms:

On 19 April 2004, PM&C wrote to the Minister responsible for honours policy recommending they seek the Governor-General declare service in Iraq eligible for the Humanitarian Overseas Service Medal.

PM&C advised the Minister that:

"Following an assessment of service of service in Iraq and consultation with DFAT and Defence, it was agreed that service in Iraq meets the criteria of the medal's regulations and should be declared as eligible service for the medal".

We request a copy of:

- 1. the assessment of service in Iraq, and*
- 2. the documents recording, or evidencing the consultations with DFAT and Defence.*

On 25 August 2020, you emailed the Department to:

Please disregard the Medal's Letters Patent or governing regulations from the request.

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.

Documents in scope

Having regard to my knowledge of where documents potentially relevant to your FOI request would be held, I arranged for a search of the Department's record management systems to identify potentially relevant files and a further search of those files for any relevant documents.

As a result of these searches, the Department identified three documents relevant to the terms of the FOI request (the **requested documents**).

Decision

I have decided to:

- grant access, in part, to Document 1, on the basis it contains information that is:
 - conditionally exempt under sections 47C (deliberative material) and 47E(d) (operations of an agency) of the FOI Act, and its disclosure would be contrary to the public interest;
- grant access, in part, to Document 2, on the basis it contains information that is:
 - conditionally exempt under sections 47C, 47E(d), and 47F(1) (personal information) of the FOI Act, and its disclosure would be contrary to the public interest; and
- refuse access in full to Document 3, on the basis that it contains information that is conditionally exempt under sections 47C and 47E(d), and its disclosure would, on balance, be contrary to the public interest.

Further information is in the Schedule at **Attachment A**.

In making my decision, I have considered the following:

- the terms of your request;
- the requested documents;
- consultation response from the Department of Foreign Affairs and Trade;
- the FOI Act; and
- The Guidelines made by the Australian Information Commissioner issued under section 93A of the FOI Act (the **FOI Guidelines**).

Charges

On 24 August 2020, the Department issued you with a notice of the preliminary charge (in the amount of \$135.65) to process your request.

On 25 August 2020, the Department received your payment of a deposit (in the amount of \$33.90) towards the charge.

In accordance with the procedures specified in the *Freedom of Information (Charges) Regulations 2019* for imposing charges on an applicant, I have fixed the charge at \$135.65 as I consider that this is a correct reflection of the actual time taken to process your request. Accordingly, you are required to pay the remainder of the charge before access is granted to the documents.

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’.¹

‘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.’²

The requested documents contain deliberative matter regarding the assessment of whether emergency humanitarian service in Iraq meets the criteria for a clasp to the *Humanitarian Overseas Service Medal*, and were prepared for the purpose of the deliberative processes involved in the functions of the Department.

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

Do the documents contain ‘purely factual material’?

Section 47C(2) of the FOI Act provides that deliberative matter does not include purely factual material.

¹ FOI Guidelines, [6.63], footnotes omitted.

² FOI Guidelines, [6.59], footnotes omitted.

The FOI Guidelines provide that ‘purely factual material’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

I am satisfied that parts of the requested documents contain information that meets the definition of “deliberative matter”. I am also satisfied that to the extent those parts of the document contain factual material, that factual material is an integral part of the deliberative content and purpose of the documents, or is embedded in, or intertwined with, the deliberative content, such that it is impractical to excise it. I therefore find that those parts do not contain ‘purely factual material’.

I am satisfied that parts of the requested documents meets the definition of “deliberative matter”. Accordingly, I am satisfied that those parts of the requested documents are conditionally exempt under section 47C of the FOI Act.

Section 47E(d) of the FOI Act – certain operations of agencies

A document is conditionally exempt if its disclosure under this Act 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 parts of the requested documents contain information which, if disclosed, would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

I consider that release of material of this nature could reasonably be expected to have an adverse effect on the relevant agency’s ability to effectively provide advice to other Australian agencies regarding Australian interests overseas and in Australia’s national interest. It is essential to the core functions of the relevant agency to ensure the integrity of these internal procedures and methods.

Accordingly, I am satisfied those parts of the requested documents are conditionally exempt under section 47E(d) of the FOI Act.

Section 47F(1) of the FOI Act – personal information

Section 47F(1) 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 (including a deceased person).

‘Personal information’ under the FOI Act has the same meaning as in the *Privacy Act 1988* and means:

... information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

Section 47F(2) of the FOI Act states that in determining whether disclosure of the document would involve the unreasonable disclosure of personal information, 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 (or to have been) associated with the matters dealt with in the document;
- the availability of the information from publicly accessible sources; and
- any other matters that the agency or Minister considers relevant.

Paragraph 6.142 of the FOI Guidelines state that key factors for determining whether disclosure is unreasonable include:

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

Document 2 contains the personal information of an individual. I have reviewed the personal information, and I am satisfied that those parts are conditionally exempt from release, under section 47F(1) of the FOI Act, as their disclosure would involve the unreasonable disclosure of personal information.

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.

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

In my view, the particular factor in favour of disclosure in this case that disclosure would:

- a) 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. The FOI Guidelines contain a non-exhaustive list of factors that may, depending on the circumstances of the case, be against disclosure.

I consider the following factors favour non-disclosure of that material:

- disclosure would affect the ability of the Department to provide comprehensive advice to Government on one of the Australian honours system's significant medals, namely the HOSM;
- disclosure could inhibit the ability of the Department to undertake inter-departmental consultations, on the basis that the level of detail contained in future consultations may be diminished, if there were a risk of such deliberations and discussions being publicly released; and
- disclosure of this material could reasonably be expected to prejudice the internal processes and methods of the department and other agencies, by providing detail into the discussions and deliberations that are undertaken as part of the provision of policy advice with those government agencies and vice versa.

Balancing the public interest

After careful consideration of all relevant factors I have decided that the factors in favour of disclosure are outweighed by the factors against disclosure. Accordingly, I have found that release of the conditionally exempt material contained in the requested documents would, on balance, be contrary to the public interest.

Deletion of exempt or irrelevant information (section 22 of the FOI Act)

In accordance with the Department's policy as advised to you on 10 August 2020, I find that the following information in the requested documents, wherever it occurs, is irrelevant to the FOI request:

- any person's signature;
- the names and contact details of Australian Public Service officers not in the Senior Executive Service (SES);
- mobile or direct numbers of SES officers; and
- the names and contact details of Ministerial staff at a level below Chief of Staff.

In accordance with section 22 of the FOI Act, I have excluded the parts of the requested documents that contain the above details, where relevant.

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
14 September 2020