



**Australian Government**

**Department of the Prime Minister and Cabinet**

ONE NATIONAL CIRCUIT  
BARTON

FOI/2020/172/IR

**INTERNAL REVIEW DECISION AND REASONS  
UNDER SECTION 54 OF  
THE FREEDOM OF INFORMATION ACT 1982**

**REQUEST BY: Trav S**

**DECISION BY: John Reid PSM  
First Assistant Secretary  
Government Division**

**By email:** [foi+request-6535-36db7e85@righttoknow.org.au](mailto:foi+request-6535-36db7e85@righttoknow.org.au)

Dear Trav S

I refer to your email of 17 September 2020 in which you made a request seeking internal review of the decision (the **primary decision**) made on 14 September 2020 by Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet (the **Department**).

The primary decision was made in relation to your request of 28 July 2020 (the **FOI request**) under the *Freedom of Information Act 1982* (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.*

The primary decision identified three documents falling within the scope of the request (the **requested documents**). The primary decision:

- granted 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;
- granted 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
- refused 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.

Under section 54(2) of the FOI Act, an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

In your request for internal review, you stated as follows:

*Freedom of Information legislation provides that conditionally exempt documents must be disclosed unless disclosure is contrary to the public interest. In this case it's reasonable to put that the factors weigh heavily in favour of disclosure and that disclosure is in the public interest.*

*The requested documents regard an assessment justifying the Humanitarian Overseas Service Medal (HOSM) declaration for Iraq in 2004. Civilian operational service recognition is an important Australian cultural construct and PM&C's Honours and Symbols Branch are the custodians of this culture. It's reasonable to enquire into the efficacy of the Branch's assessments given the public record apparently evidences administrative gaps in the HOSM assessment for Iraq.*

*The Honours Branch have stated only two organisations were consulted following their assessment for Iraq despite it being evident at the time of the assessment that there were more than two relevant stakeholder organisations involved.*

*The Honours Branch and the public service officers undertaking the assessment had a moral and potentially a statutory duty to undertake comprehensive assessments considerate of all relevant stakeholder before providing advice to Government. It's reasonable for the public to scrutinise this process given the apparent gaps in this assessment. It's unclear why relevant stakeholders were not offered the opportunity to present a submission for consideration during the assessment.*

*The Iraq War was the first time in Australia's history that the Commonwealth Government applied an all-of-government approach utilising a mix of public servants and contractors to comprise an humanitarian contingent amidst and ongoing war. It was also the first time Government decided to engage former armed service veterans to provide essential functions to an Australian humanitarian contingent. None of this appears to be captured in the Honours Branch's assessment.*

*For these reasons alone it was imperative that the Honours Branch undertook and comprehensive assessment and the information available to the public does not show that this occurred. The FOI legislation holds that the public should expect Government departments to operate fairly and transparently in their administrative decision making and to be accountable for their decisions.*

*The Commonwealth Government states the Australian Honours system is predicated on:*

*“a sense of fairness, equity and compassion and an egalitarian commitment to acknowledge the quality of service and substance of action without regard to status or class”.*

*The Sovereign and head of the Australian Honours system and the Australian Prime Minister state the HOSM was instituted for the purpose of:*

*“according recognition to persons who have given humanitarian service in hazardous circumstances outside Australia”.*

*The assessment evidently overlooks relevant stakeholders that meet these definitions and it’s in the public interest to understand the degree to which the Honours Branch applies the HOSM’s legislative definitions in their administration decisions regarding the HOSM. Disclosure in this case will promote the objects of the FOI Act, and will increase scrutiny, discussion, comment and review of government’s administration of Australia’s honours system.*

### **Authorised decision maker**

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision.

I am authorised to make this decision in accordance with arrangements approved by the Department’s Secretary under section 23 of the FOI Act.

### **Internal review decision**

I have decided to affirm the primary decision.

In reaching my decision, I have had regard to:

- the terms of your FOI request;
- the requested documents;
- the primary decision;
- your request for internal review;
- the FOI Act; and
- the ‘Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*’<sup>1</sup> (the **FOI Guidelines**).

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<sup>1</sup> FOI Guidelines published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

## Reasons

I am satisfied that the requested documents are conditionally exempt under the respective exemptions identified, and for the reasons given, in the primary decision.

Section 11A(5) of the FOI Act provides that an agency must give access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

The primary decision identified one public interest factor favouring disclosure, namely that disclosure would promote the objects of the FOI Act.

In the light of your contentions regarding the public interest in disclosure and the FOI Guidelines, I find that the following additional public interest factors favour disclosure namely that disclosure may:

- inform the community of the Government's operations;<sup>2</sup>
- reveal the reasons for a government decision and any background or contextual information that informed the decision;<sup>3</sup> and
- enhance the scrutiny of government decision making.<sup>4</sup>

I am satisfied that the public interest factors against disclosure identified in the primary decision continue to apply.

Having weighed the public interest factors for and against disclosure, and notwithstanding the additional public interest factors favouring disclosure that I have identified, I am satisfied that, on balance, disclosure of the conditionally exempt information at this time would be contrary to the public interest.

## Review rights

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

## Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely



John Reid  
First Assistant Secretary  
Government Division  
19 October 2020

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<sup>2</sup> FOI Guidelines, [6.19].

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.