



30 November 2020

Ms E Davey

BY EMAIL: foi+request-6568-500e08c6@righttoknow.org.au

In reply please quote:

FOI Request: FA 20/08/01045

File Number: OBJ2020/27421

Dear Ms Davey

Freedom of Information (FOI) request - Access Decision

On 17 August 2020, the Department of Home Affairs (the Department) received a request for access to a document under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following document:

The declaration or designation of the Mantra Bell City Hotel as an APOD and any documents flowing from or associated with that declaration.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

4 Document in scope of request

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 17 August 2020 when your request was received.

5 Decision

The decision in relation to the document in the possession of the Department which falls within the scope of your request is as follows:

- Release one document in part with deletions

6 Reasons for Decision

Detailed reasons for my decision are set out below.

My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 Section 47E of the FOI Act – Operations of Agencies

Section 47E(c) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by an agency.

The Department operates in a position of trust within the border environment and as such the highest standard of conduct must be encouraged and maintained.

The Department's Professional Standards Framework promotes the highest of standards of professional conduct expected of the Department's workforce. Contained within the professional standards framework is the integrity framework which includes measures designed to protect our workforce from criminal influence and to mitigate the potential for corruption risk. Any adverse effect to the effectiveness of the Department's ability to manage its personnel within its integrity framework exposes the Department to potential integrity risk which would result in a substantial adverse effect on the operations of the Department.

At times, the policy space that this Department operates in can be highly controversial and divisive and, in some circles, an unpopular aspect of government policy. The Department also operates in a highly sensitive operational environment. As such, affording protection to its staff is a high priority for the Department.

Staff names and direct contact details are not published outside the Department in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

The disclosure of staff names and direct contact details outside the Department could expose those members of staff to unsolicited approaches by individuals with criminal affiliations and may result in serious risks to the security and integrity of the Department's lawful activities. There have also been documented cases of members of staff of the Department being harassed and receiving personal threats to their safety.

I am therefore satisfied that the likelihood of a threat from unknown individuals to members of staff is based not based on intangible or hypothetical threats.

The Department has a primary duty of care to ensure, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). The Department must ensure, as far as is reasonably practicable, that the health and safety of other persons is also not put at risk from work carried out as part of the conduct of the Department.

I am of the view that the disclosure of the names of officers contained within the documents could impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This this would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department.

I have decided that the documents are conditionally exempt under section 47E(c) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.3 below.

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure 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 consider that the disclosure of the parts of the document marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

I have decided that parts of the document are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.3 below.

6.2 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' 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 s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the document would disclose personal information relating to a third party. The information within the document would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

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 s.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;*
- *any other matters that I consider relevant.*

The information relating to the third party 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, the individual(s) concerned is/are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the a third party would be relevant to the broader scope of your request, as you are seeking access to information relevant to APOD designations rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the document would involve an unreasonable disclosure of personal information about an individual.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.3 below.

6.3 The public interest – section 11A of the FOI Act

As I have decided that parts of the document are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);

- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Having regard to the above I am satisfied that:

- access to the document would promote the objects of the FOI Act.
- the subject matter of the document does not seem to have a general characteristic of public importance. The matter has a limited scope and, in my view, would be of interest to a very narrow section of the public.
- no insights into public expenditure will be provided through examination of the document.
- you do not require access to the document in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the document:

- disclosure of the document could reasonably be expected to prejudice the personnel or management functions of the Department and would have a substantial adverse effect on the operations of the Department. There is a strong public interest in ensuring that officers and other individuals come forward with concerns about improper conduct and participate in any resulting workplace enquiries and integrity investigations. It would be contrary to the public interest to create an environment where there was a reluctance by anyone to provide such information. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- disclosure of the personal information of individuals contained in the document could reasonably be expected to prejudice the protection of those individuals' right to privacy. Disclosing the names of the Department officers who work in an operational environment may invite inappropriate approaches by third parties and may prejudice the safety of those officers and their families when the documents are made available to the public at large. The names of these particular officers are not available through any other publicly available source and are not included in the Department organisational chart.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of 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 document was (or is) of high seniority in the agency to which the request for access to the document was made;
- d) access to the document could result in confusion or unnecessary debate.

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the document would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

9 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



PN: 60115522

Authorised Decision Maker
Department of Home Affairs

