



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

FOI reference number: 21-052

Via email: foi+request-6747-11a37f0e@righttoknow.org.au

Decision made under the *Freedom of Information Act 1982* – Release in part

I refer to your request to the Department of Infrastructure, Transport, Regional Development and Communications (**department**) received on 24 September 2020 via the Right to Know website for access to documents under the *Freedom of Information Act 1982* (**FOI Act**).

You requested the following documents:

- *Classifier note;*
 - *Decision document;*
 - *Application for classification and its supporting material;*
 - *Screenshot showing information from the database as seen by the Classification Board;*
 - *Email and its attachment to and/or from applicant, Classification Board, distributor, publisher, developer;*
 - *Form and its attachment to and/or from applicant, Classification Board, distributor, publisher, developer;*
- for Call of Duty Black Ops Cold War.*

Authority

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the department in accordance with s 23(1) of the FOI Act.

Documents subject to this request

The department has undertaken a search of its records and has identified 36 documents that fall within the scope of your request. These documents are set out in Schedule 1.

Decision

I have made a decision to release the documents relevant to your request in part. The documents that I have chosen to grant access to in part are set out in Schedule 1, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the FOI Act.

During the processing of your request the department consulted with the game developer Activision, as they were potentially affected by the release of the documents. Activision has objected to the disclosure of some of the material in the documents. While I agree that some of this material is exempt I have also decided that some can be released, accordingly Activision has 30 days from the date of notification of my

decision, to seek a review of my decision. Subject to the outcome of any such review, the Department will provide you with the documents to be released to you in accordance with the FOI Act.

Reasons for decision

In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to the documents follows.

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);
- sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth;
- comments of a third party potentially affected by the release of the documents; and
- the following provisions of the FOI Act:
 - **section 47F** *(Personal privacy)*
 - **section 47G** *(Business affairs)*

Statement of reasons

I have decided to grant partial access to the 36 documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Section 47F (Personal privacy)

Section 47F 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' is defined under section 4 of the FOI Act as having the same meaning as in the *Privacy Act 1988* (Privacy Act). In subsection 6(1) of the Privacy Act, 'personal information' 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 material form or not.'*

The documents marked as partially exempt under this provision contain personal information including names, mobile phone numbers, emails and other personal particulars of individuals. This information is not public knowledge and I see no public purpose in disclosing the personal information.

Accordingly, I have decided that the documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test (Section 47F):

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

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

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

I agree that disclosure would promote the objects of the FOI Act. I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further the personal information does not relate to the applicant and therefore that public interest consideration is not relevant in this circumstance.

I also considered the following factors which do not favour disclosure:

- (a) disclosure could reasonably be expected to prejudice the management function of an agency;
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

As set out in section 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, 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 embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (c) access to the document could result in any person misinterpreting or misunderstanding the document;
- (d) 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
- (e) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factors have been considered, as set out in section 11B(4) of the FOI Act.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Section 47G (Business affairs)

A document is conditionally exempt if it discloses information (business information) concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information 'would, or could reasonably be expected to, unreasonably affect... that organisation or undertaking in respect of its lawful business, commercial or financial affairs' (section 47G(1)(a) of the FOI Act).

The documents contain information about a third party business, Activision who developed the game the subject of this request, and discussion about the classification and publication process in relation to this game, which are not publicly known.

Activision has submitted that release of the documents in their entirety would disclose information about their business and commercial affairs, including processes for classification and publication of the game. Activision submits that the documents contain valuable commercial information and trade secrets. If disclosed, Activision contend that this information could reasonably be expected to affect their ability to contend with their market competitors and undermine complex marketing strategies, particularly surrounding launch dates and lead times for release of their games.

Application of the public interest test (Section 47G):

I have found that some material in the documents you have requested is conditionally exempt under section 47G of the FOI Act. Section 11A(5) of the FOI Act provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

To assess whether release of the exempt material would be contrary to the public interest, I considered the following factors outlined in subsection 11B(3) of the FOI Act which favour disclosure:

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

I agree that disclosure would promote the objects of the FOI Act. Although disclosure may inform debate on a matter of public importance I do not consider that it would promote effective oversight of public expenditure nor would it allow a person to access his or her own personal information as the information does not relate to the applicant themselves.

I also considered the following factors which do not favour disclosure:

- (a) disclosure of the information would, or could reasonably be expected to, unreasonably affect the third party adversely in respect of their lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the department for the purpose of the administration of matters administered by the department.

The material in the documents requested includes information relating to the commercial activities of Activision, specifically processes surrounding the classification and release of games.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to exempt the documents in part under both section 47G of the FOI Act.

Irrelevant material

Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, section 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions. Accordingly, irrelevant material has been redacted from the documents.

I consider irrelevant material to be information in the documents that is not related your request, including discussion or comments about other games and administrative processes and as such, I have made a decision not to release this information.

Publication of information in the FOI disclosure log

Section 11C of the FOI Act requires publication of released documents on the department's online FOI disclosure log, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable. I have decided that the documents released will be published on the disclosure log.

Your rights of review

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to FOI@infrastructure.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contacts

If you wish to discuss this matter, please contact the department's FOI Coordinator on (02) 6274 7393 or via email at FOI@infrastructure.gov.au

Yours sincerely



Aaron O'Neill
Assistant Secretary
Classification Branch

30 November 2020



Schedule of documents

Decision date: November 2020

FOI reference number: 21-052

Documents: Documents regarding classification of Call of Duty Black Ops Cold War

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
Document 1	September 2020	Activision	Department	Request	Third party appeal period applies.	
Document 2	September 2020	Department	Department	Request for your approval	Third party appeal period applies.	
Document 3	September 2020	Department	Department	RE: Request for your approval	Third party appeal period applies.	
Document 4	September 2020	Department	Activision	RE: Request	Third party appeal period applies.	

Document 5	September 2020	Activision	Department	RE: Request	Third party appeal period applies.	
Document 6	September 2020	Department	Activision	RE: Request	Third party appeal period applies.	
Document 7	September 2020	Activision	Department	RE: Request	Third party appeal period applies.	
Document 8	September 2020	Department	Department	Applications on hand	Third party appeal period applies.	
Document 9	September 2020	Department	Department	RE: Applications on hand	Third party appeal period applies.	
Document 10	September 2020	Activision	Department	RE: Request	Third party appeal period applies.	
Document 11	September 2020	Department	Activision	RE: Request	Third party appeal period applies.	
Document 12	September 2020	Department	Department	Completed Applications	Release in part	s22, s47F, s47G
Document 13	September 2020	Department	Department	Applications on Hand	Release in part	s22, s47F, s47G
Document 14	September 2020	Department	Department	Applications on Hand	Release in part	s22, s47F, s47G

Document 15	September 2020	Activision	Department	RE: Certificate email	Release in part	s47F, s47G
Document 16	September 2020	Department	Activision	RE: Certificate email	Release in part	s47F, s47G
Document 17	September 2020	Activision	Department	RE: Certificate email	Release in part	s47F, s47G
Document 18	September 2020	Activision	Department	RE: Certificate email	Release in part	s47F, s47G
Document 19	September 2020	Activision	Department	RE: Certificate email	Release in part	s47F, s47G
Document 20	September 2020	Department	Activision	Call of Duty: Black Ops Cold War – Change of Programmer	Release in part	s47F, s47G
Document 21	September 2020	Activision	Department	RE: Request	Third party appeal period applies.	
Document 22	September 2020	Department	Department	RE: Remove request. Request	Third party appeal period applies.	
Document 23	September 2020	Department	Activision	RE: Request	Third party appeal period applies.	
Document 24	September 2020	Activision	Department	RE: Request	Third party appeal period applies.	
Document 25	September 2020	Department	Department	File Number: T20/3115 Includes handwritten notes	Release in part	s47F, s47G

Document 26	September 2020	Department	Department	File Number: T20/3115 Includes handwritten notes	Release in part	s47F, s47G
Document 27	September 2020	Department	Department	File Number: T20/3115 Includes handwritten notes	Release in part	s47F, s47G
Document 28	September 2020	Department	Department	File Number: T20/3115 Decision Report	Release in part	s47F, s47G
Document 29	2020	Department	Department	Application for Classification of a Computer Game CALL OF DUTY: BLACK OPS COLD WAR	Release in part	s47F, s47G
Document 30	Undated	Department	Department	FORM. Online Interactivity	Third party appeal period applies.	
Document 31	October 2019	Department	Department	FORM. Contentious material – computer games	Third party appeal period applies.	
Document 32	October 2019	Department	Department	FORM. Detailed written description of gameplay	Third party appeal period applies.	
Document 33	September 2020	Activision	Department	Received package	Release in part	s47F, s47G

Document 34	September 2020	Activision	Department	Request letter	Third party appeal period applies.	
Document 35	September 2020	Department	Activision	CLASSIFICATION CERTIFICATE FOR A COMPUTER GAME	Release in part	s47F, s47G
Document 36	Undated	Department	Department	Database screen-shot of an Application Search	Release in part	s47G