



Australian Government
Attorney-General's Department

Our ref: FOI20/191; CM20/20/8545

13 November 2020

Mr Alan Ashmore

By email: foi+request-6804-9899b0ed@righttoknow.org.au

Dear Mr Ashmore

Freedom of Information request FOI20/191 – decision letter

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (the FOI Act).

Your request

On 15 October 2020, you requested access to:

- *Evidence of this position, (Interim Commissioner)[Interim National Commissioner for Defence and Veteran Suicide Prevention], being advertised in the press, and*
- *A copy of the full job description for the position of Interim Commissioner.*

On 30 October 2020 the department acknowledged your request.

A decision in relation to your request is due on 16 November 2020.

My decision

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests made to the Attorney-General's Department (the department).

I have identified one document that falls within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents.

In making my decision regarding access to the relevant document, I have taken the following material into account:

- the terms of your request;
- the content of the document identified as within scope of your request;
- advice provided to me by officers with responsibility for matters to which your request relates;
- the provisions of the FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

I have decided to grant access in part to one document pursuant to sections 47E(c) and 47F(1) of the FOI Act.

Additional information

The timing and selection of the interim National Commissioner are decisions of the Australian Government. In announcing the appointment of Dr Boss to this position on 30 September 2020, the Attorney-General stated that Dr Boss' significant experience as both a Magistrate and Coroner, coupled with her understanding of human rights issues and experience in the Australian Defence Force, make her well placed to engage with the families, friends and communities affected by the loss of a loved one. As the interim National Commissioner, Dr Boss will undertake the role of the National Commissioner until legislation formally establishing the position has been enacted. Once legislation has been enacted, the Australian Government will consider the permanent appointment to recommend to the Governor-General consistent with the draft legislation. More information about the National Commissioner function, including the interim National Commissioner, is available at: <https://www.nationalcommissionerdrvsp.gov.au/>.

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

The schedule of documents at **Attachment B** sets out brief information about each document within the scope of your request and my decision in relation to access to each of those documents.

The statement of reasons at **Attachment C** sets out the reasons for my decision to refuse access to certain material to which you have requested access.

The document to which I have decided to grant partial access to under the FOI Act are at **Attachment D**.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Joanna, who can be reached on (02) 6141 6666 or at foi@ag.gov.au.

Yours sincerely



Samantha Byng
Assistant Secretary
Legal Services Policy Division

Attachments

Attachment A:	Review rights
Attachment B:	Schedule of documents
Attachment C:	Statement of reasons
Attachment D:	Documents



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter, and be lodged in one of the following ways:

email: foi@ag.gov.au

post: Freedom of Information and Privacy Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of the decision letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>



Australian Government
Attorney-General's Department

Attachment B - Schedule of documents - Freedom of Information Request FOI20/191

Document no.	Date	No. pages	Description	Access Decision	Exemption/s Applied
1	26 September 2020	3 pages	Duty statement – interim National Commissioner for Defence and Veteran Suicide Prevention	Grant access in part	Section 47E: Public interest conditional exemption—certain operations of agencies Section 47F: Public interest conditional exemption—personal privacy



Attachment C – Statement of reasons – FOI20/191

This document, when read in conjunction with the Schedule of documents at **Attachment B**, provides information about the reasons I have decided not to disclose certain material to you in response to your request for documents under the *Freedom of Information Act 1982* (FOI Act).

Public Interest Conditional Exemptions

An agency or minister can refuse access to a document or part of a document that is conditionally exempt from disclosure under Division 3 of Part IV of the FOI Act. The exemptions from Division 3 of Part IV of the FOI Act which I have decided also apply to the documents for your request are sections 47E (certain operations of agencies) and 47F (personal privacy).

Where a document is assessed as conditionally exempt, it is only exempt from disclosure if disclosure would, on balance, be contrary to the public interest. The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

A single public interest test applies to each of the conditional exemptions. This public interest test includes certain factors that *must* be taken into account where relevant, and other factors which *must not* be taken into account.

Brief information about each of the conditional exemptions applied when making a decision about disclosure of the document to which you have requested access is set out below. Additional information about each of these conditional exemptions can be obtained from the Office of the Australian Information Commissioner FOI Guidelines available at:

<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions>.

Section 47E: Public interest conditional exemption—certain operations of agencies

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I have decided to apply section 47E(c) to the document for your request. My reasons for applying this exemption has been set out below.

Section 47E(c)

In deciding whether information in a document is conditionally exempt pursuant to section 47E(c), the FOI Guidelines provide at [6.114] that the document must relate to either:

- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety; or
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and

underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

The relevant document for your request to which section 47E(c) has been applied relates to the management of personnel, namely the administrative and employment arrangements concerning an individual and their appointment to a particular role. I am satisfied that disclosure of this information would have a substantial and adverse effect on the Commonwealth's ability to manage personnel.

In the course of any appointment processes, the Commonwealth may enter into arrangements with an individual or an agency to determine the terms of appointment to a particular role. Through this work, the Commonwealth may receive or create a range of sensitive information about individuals' employment. For example, arrangements regarding the accrual or use of leave; cessation or termination of appointment; and remuneration or allowances for performance of official duties. This kind of information is obtained and used by the Commonwealth for limited purposes and it is expected that it will not be disclosed at a later time. Accordingly, this kind of information is managed by the Commonwealth with the upmost sensitivity and in the strictest of confidence.

The disclosure of the information in the document for your request would reveal information of the kind described above. It is clear that the information in the document was drafted under an expectation that it would be managed confidentially for the purpose of personnel management and not later disclosed for any other purpose. Having regard to these matters, I am satisfied that disclosure of the information would or could reasonably be expected to:

- undermine confidence in the Commonwealth's ability to manage confidential and sensitive personnel information;
- unreasonably affect individuals and their right to privacy in respect of information which does not in and of itself concern performance of their official duties;
- impede the Commonwealth's ability to obtain similarly sensitive information in the future; and
- undermine working relationships between the Commonwealth and other entities or individuals regarding appointment arrangements.

I have therefore decided that this information is conditionally exempt pursuant to section 47E(c) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest and I have included my reasoning in this regard below.

Section 47F: Public interest conditional exemption—personal privacy

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). For the purposes of the FOI Act, personal information is defined as: 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.

I have identified the following personal information relating to private individuals in the relevant documents for your request:

- Information about the remuneration of the interim National Commissioner for Defence and Veteran Suicide Prevention.

In deciding whether to conditionally exempt the personal information described above, I have had regard to the following factors set out in section 47F(2) of the FOI Act:

- 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 considers relevant.

My reasons for applying the section 47F(1) exemption to the personal information listed above are set out below.

In my view the relevant personal information is not well known. The information was provided confidentially and is known only to the persons whose information appears in the document and departmental officers with responsibility for the matters concerned. General inquiries have been made of online sources and the relevant information does not appear to be publicly available. I consider it likely that the persons concerned would object to disclosure of their personal information and, noting that the FOI Act does not control or restrict any subsequent use or dissemination of information disclosed, I consider that disclosure could reasonably be expected to cause distress to the persons concerned.

For the reasons set out above, I have decided to exempt the personal information of individuals pursuant to section 47F(1) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in this regard below.

Section 11A(5): Public interest test

Access to a conditionally exempt document must generally be given unless doing so would be contrary to the public interest.

The FOI Guidelines issued by the Office of the Australian Information Commissioner provide at paragraph 6.5 that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest,
- not something of interest to the public, but in the interest of the public,
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests,
- necessarily broad and non-specific, and
- related to matters of common concern or relevance to all members of the public, or a substantial section of the public.

In deciding whether to disclose conditionally exempt material, I have considered the factors favouring access set out in section 11B(3) of the FOI Act. I have not taken into account the irrelevant factors listed under section 11B(4) of the FOI Act.

Of the factors favouring disclosure, I consider that release of the conditionally exempt material identified for your request would:

- promote the objects of the FOI Act, including by:
 - informing the community of the Government's operations; and
 - enhancing the scrutiny of government decision making.
- advance the public interest in government transparency and integrity.

The FOI Act does not list any specific factors weighing against disclosure. However, I have considered the non-exhaustive list of factors against disclosure in the FOI Guidelines as well as the particular circumstances relevant to the conditionally exempt material.

I consider the release of the conditionally exempt material could, as the case may be, reasonably be expected to:

- prejudice the protection of individuals' right to privacy;
- prejudice the fair treatment of individuals;
- impede the Commonwealth's ability to undertake its functions, including effective assessment and management of current and prospective personnel;
- adversely affect and damage the level of trust that employees place in the Commonwealth to confidentially protect and manage their personal information, and
- prejudice the ability of the Commonwealth to obtain similarly confidential and sensitive information in the future.

On balance, I consider that the factors against disclosure outweigh the factors favouring access and that access to the conditionally exempt material identified for your request would be contrary to the public interest.