



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2020/291

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Francis Unmeopa

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

By email: foi+request-7000-df99ec6d@righttoknow.org.au

Dear Mr Unmeopa

I refer to your email, dated 29 December 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* (the **FOI Act**) in the following terms:

On 17 November 2009, the Assistant Secretary Awards and Culture Branch, Mr Peter Rush, approved document Ref: B09/1640 titled "Humanitarian Overseas Service Medal: Assessment of Australian contingent to GE Infrastructure for 'Indian Ocean' operation".

On 1 September 2020, I requested PM&C's assessment justifying the award of the HOSM to GE Infrastructure, Water and Process Technologies Australian contingent under the FOI Act.

On 1 Dec 2020, the Assistant Secretary Parliamentary and Government Branch, Mr Rush, released a copy of the assessment. Unfortunately parts of the assessment were not included in the release.

As such we respectfully request the release of the following documents:

- 1. "Attachment A. Draft Response and Instrument".*
- 2. "Attachment B. Testimonial (s47F redacted)".*

Regarding this assessment, the first page appears to show conflicting handwritten annotations. The decision "NOT AGREED" is either crossed-out or signed and also circled. A line is drawn through "SIGNED/NOT SIGNED", but the document appears to be signed. Hand written notes appear to direct someone to "please discuss" the document and its advice.

Taking into account that these handwritten notations do not provide an accurate conclusion as to the final decision, we would be grateful for a copy of:

3. *any documents verifying the Cabinet Secretary's decision in relation to the assessment.*
4. *documents/correspondence resulting from the annotation to 'please discuss' the assessment or recommendation.*

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 FOI Act.

Documents meeting the terms of your request

The Department has identified:

- two documents (Document 1 and Document 2) relevant to part 1 of your request;
- one document (Document 3) relevant to part 2 of your request; and
- two documents (Document 4 and Document 5) relevant to part 3 of your request.

The Department has not identified any document relevant to part 4 of your request.

Decision

I have decided to:

- grant access, in full, to Documents 1 and 2;
- refuse access, in full, to Document 3, on the basis it contains information that is conditionally exempt under section 47F (personal information) of the FOI Act, and its disclosure would, on balance, be contrary to the public interest;
- grant access to Documents 4 and 5, with irrelevant material deleted under section 22 of the FOI Act; and
- refuse access, under section 24A(1)(b)(ii) of the FOI Act, to part 4 of your request.

Further information is in the schedule at Attachment A.

The documents that can be released to you are attached.

In making my decision, I have had regard to the following:

- the terms of your request;
- the requested documents;
- the FOI Act; and
- The 'Guidelines made by the Australian Information Commissioner issued under section 93A of the *Freedom of Information Act 1982*' (the **FOI Guidelines**).

Reasons

Documents 1 and 2

Section 47C of the FOI Act – deliberative processes

Section 47C(1) of the FOI Act provides that a document is conditionally exempt if its disclosure 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 an agency, a Minister, or the Government of the Commonwealth.

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

The FOI Guidelines relevantly provide as follows:

A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

'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 of a proposal, a particular decision or a course of action.¹

...

'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'.²

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.³

I am satisfied that Document 1 and Document 2, which are drafts of documents prepared by the Department, contain deliberative matter prepared in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department. I am also satisfied that they do not contain 'purely factual material'.

I am therefore satisfied Document 1 and Document 2 contain information that is conditionally exempt under section 47C of the FOI Act.

Document 3

Section 47F 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).

¹ FOI Guidelines, [6.58] – [6.59] (footnotes omitted).

² FOI Guidelines, [6.63] (footnotes omitted).

³ FOI Guidelines, [6.73] (footnotes omitted).

‘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.

The FOI Guidelines states that key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable;
- the document contains third party personal information;
- release of the document would cause stress on the third party; and
- no public purpose would be achieved through release.⁴

I am satisfied that Document 3 contains the personal information of identified individuals, or individuals who are reasonably identifiable. I consider that disclosure of the personal information would be unreasonable for the following reasons:

- the personal information may not be well known;
- the persons to whom the information relates may not be known to be (or to have been) associated with the matters dealt with in the document;
- the personal information may not be available from publicly accessible sources;
- the personal information does not appear to have been provided to Government on the understanding that it would be made public; and
- the personal information may be sensitive.

I am therefore satisfied that the personal information in Document 3 is conditionally exempt under section 47F of the FOI Act.

Section 11A(5) of the FOI Act – the 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.

⁴ FOI Guidelines, [6.142].

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

The FOI Act sets out four factors favouring disclosure which must be considered if relevant, namely:⁵

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or
- allow a person to access his or her personal information.

I am satisfied that disclosure of the conditionally exempt information may promote the objects of the FOI Act. The FOI Guidelines contain a non-exhaustive list of public interest factors favouring disclosure that may also be relevant in particular circumstances.⁶ However, the list in the FOI Guidelines contains no additional relevant public interest factors to those that I have already taken account of as described above.

Factors against disclosure

The FOI Act does not provide for any public interest factors against disclosure that decision makers may consider. The FOI Guidelines contain a non-exhaustive list of public interest factors against disclosure that may also be relevant in particular circumstances,⁷ to which I have had regard.

Conditionally exempt information under section 47C of the FOI Act

I consider the following factors favour non-disclosure of the deliberative material in Document 1 and Document 2:

- disclosure could inhibit the ability of the Department to provide comprehensive advice to the Government on a key Commonwealth program, namely the Humanitarian Overseas Service Medal, a significant medal in the Australian honours system, administered by the Department, on the basis that the level of detail contained in future internal correspondence and briefs may be diminished, if there were a risk of such deliberations and discussions being publicly released; and

⁵ See section 11B(3) of the FOI Act and FOI Guidelines, [6.17].

⁶ FOI Guidelines, [6.19].

⁷ FOI Guidelines, [6.22].

- disclosure could inhibit officers in the recording, or exchanging, opinion, advice and recommendation which would then reduce the quality, clarity or frankness of written advice.

After careful consideration of all relevant factors, I have decided that the factor in favour of disclosure outweighs the factors against disclosure. I am therefore satisfied that disclosure of the deliberative information in Documents 1 and 2 would not, on balance, be contrary to the public interest.

Conditionally exempt information under section 47F of the FOI Act

I consider the following factors favour non-disclosure of the personal information in Document 3:

- disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy; and
- disclosure could reasonably be expected to harm the interests of an individuals.

After careful consideration of all relevant factors, I have decided that the factor in favour of disclosure is outweighed by the factors against disclosure.

I am therefore satisfied that disclosing the conditionally exempt information in Document 3 would, on balance, be contrary to the public interest.

Part 4 of your request

Section 24A(1) of the FOI Act provides that:

An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document;

and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

Having regard to the terms of part 4 of your request, searches for documents were undertaken by my Branch, as the relevant business area in the Department with responsibility for the subject matter of the FOI request. Those searches did not locate any documents meeting the terms of this part of request.

I am satisfied that all reasonable steps have been taken to find documents relevant to part 4 of the FOI request, and I am satisfied that documents do not exist.

I have therefore decided to refuse part 4 of your request under section 24A(1)(b)(ii) of the FOI Act.

Section 22 of the FOI Act - Deletion of exempt or irrelevant information

Section 22 of the FOI Act provides that exempt or irrelevant information may be deleted from a copy of a document, and access granted to such an amended copy where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

As advised by the Department on 12 January 2021, it is the Department's policy to withhold:

- any person's signature;
- the names and contact details of Australian Public Service officers not in the Senior Executive Service (SES);
- the mobile or direct numbers of SES officers;
- 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.

Publication of the documents

Under section 11C of the FOI Act the Department will make arrangements to publish the documents released to you on the Department's FOI disclosure log.

Processing and access charges

I have decided not to impose processing charges in respect of your request.

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 decision. 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



Peter Rush
Assistant Secretary
Parliamentary and Government Branch

28 January 2021