



Attachment C – Statement of reasons – FOI21/030

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

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: names and contact information, including email addresses and telephone numbers.

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:

- (a) the extent to which the information is well known;*
- (b) whether the people to whom the information relates are known to be (or to have been) associated with the matters dealt with in the document;*
- (c) the availability of the information from publicly accessible sources;*
- (d) any other matters that the agency considers relevant.*

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

In my view the relevant personal information is not well known, nor are the persons concerned generally known to be (or to have been) associated with the particular matters dealt with in the documents. The information is known only to the persons whose information appears in the documents and departmental officers with responsibility for the matters concerned.

I have examined publicly available sources of information and the information does not appear to be reasonably publicly available. 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 concern and 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 under the header '*Section 11A(5): Public interest test*'.

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 Guidelines issued by the OAIC 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.

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 Guidelines as well as the particular circumstances relevant to the conditionally exempt material.

I consider the release of the conditionally exempt material could reasonably be expected to prejudice the protection of an individual's right to privacy. In my view, disclosure of the names or contact details will not increase transparency or give any insight into the roles or responsibilities of the junior officers. As discussed above, the officers are not well known or known or known to the public more generally. While there may be a public interest in the disclosure of the substantive information in the documents, the disclosure of the names of junior staff officers and their contact details will not add any value or benefit to public debate or to the ability of the public to scrutinise the operations of the department.

In considering the public interest test, I have also turned my mind to the Administrative Appeals Tribunal decision in *Warren*¹. In that matter, Deputy President (DP) Forgie considered the disclosure of personal information of public servants in the context of programmes subject to significant public criticism and scrutiny. Relevantly, DP Forgie stated at paragraph 135 that:

It is contrary to the public interest to expose individuals in that environment to public criticism and attack of the sort directed against the Programme when disclosure of the documents will give no insight into the role or responsibility that they had in the formulation of, or policy behind, the Programme as opposed to simply implementing the decisions of others.

In this case, the authorisation for the tweet was given by a departmental officer approving the promotion of a media release which was already published on the Attorney-General's website, as part of a standard process. The media release promoted by the tweet was reviewed and deemed by the department (EL2 and relevant SES) to fit within the relevant guidance for publishing ministerial content to agency-funded websites, including the Attorney-General's website. This guidance is issued and maintained by the [Digital Transformation Agency](#) (DTA). This is the guidance followed by all departments and agencies across the APS and includes the following direction:

¹ *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 (9 November 2020)

Agency-funded sites must not contain material of a party political nature, although individual judgement will be required. For example, a minister's explanation and defence of government policy might draw distinctions between government and opposition policies. Such material may be placed on a ministerial site funded by an agency. However, material that relates solely to party political issues or that could be categorised as 'how to vote' material may not be placed on an agency-funded site.

Under the *Work Health and Safety Act 2011*, the Commonwealth has a primary duty of care to ensure, as far as is reasonably practicable, the health and safety of workers by maintaining safe work practices. I am of the view that the disclosure of personal information of junior officers in this instance may pose a risk to the work health and safety of these workers. This is because I would not be able to take reasonable steps (including by not publishing names and contact details of junior officers) to protect them from unsolicited contact which may be harassing, intimidating and threatening in nature. This is particularly so in the current digital age, where information can be disseminated easily and quickly.

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