



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/028

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

DECISION BY: Peter Rush
Assistant Secretary
Parliamentary and Government Branch

By email: foi+request-7122-e3950e9e@righttoknow.org.au

Dear Trav S

I refer to your email, dated 2 March 2021, 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:

Palladium Group Pty Ltd is eligible for the HOSM with Phillipines clasp. Please release the following documents for public review:

- 1. Palladium Group's submission for HOSM eligibility.*
- 2. Submissions and testimonials from other entities related to Palladium Group's participation in the eligible relief operation.*

On 26 March 2021, the Department wrote to advise you that in accordance with section 15(6) of the FOI Act, the processing period had been extended for a further 30 days in order to allow the Department to consult with a third party under sections 27 and 27A of the FOI Act.

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 three documents relevant to the terms of the FOI request (the **requested documents**), described in the schedule at [Attachment A](#).

Decision

I have decided to:

- grant access, in part, to Document 1, on the basis it contains information that is conditionally exempt under sections 47F (personal information) and 47G (business information) of the FOI Act, and its disclosure would be contrary to the public interest; and
- grant access, in full, to Documents 2 and 3.

The version of the documents that can be released to you is attached.

In making my decision, I have considered the following:

- the terms of your request;
- the requested documents;
- submissions made by a third party consulted under sections 27 and 27A of the FOI Act;
- comments from the Department of Foreign Affairs and Trade;
- 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

Section 47F of the FOI Act – personal information

Section 47F(1) of the FOI Act provides as follows:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

'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.¹

The FOI Guidelines provide that other factors that may be relevant to whether disclosure of personal information would be unreasonable under section 47F of the FOI Act include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information
- whether disclosure of the information might advance the public interest in government transparency and integrity.²

The FOI Guidelines further provide that the object of the FOI Act of promoting transparency in government processes and activities needs to be balanced with the purpose of section 47F to protect personal information.³

I am satisfied that Document 1 contains the personal information of identified individuals, or individuals who are reasonably identifiable. I consider that the following factors weigh in favour of a finding that disclosure of the personal information would be unreasonable:

- the opposition to disclosure expressed or likely to be held by the relevant persons who own the personal information;
- the release of the documents would cause stress to the third parties;
- no public purpose would be achieved through release;
- 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 documents; and
- the personal information may not be available from publicly accessible sources.

While disclosure of the information might advance the public interest in government transparency and integrity, I consider overall that this is outweighed by the interests of the individuals concerned in the protection of their privacy.

I am satisfied that the personal information in Document 1 is conditionally exempt under section 47F of the FOI Act.

¹ FOI Guidelines, [6.142].

² FOI Guidelines, [6.143].

³ FOI Guidelines, [6.144].

Section 47G of the FOI Act – business information

Section 47G(1) of the FOI Act provides as follows:

A document is conditionally exempt if its disclosure under this Act would disclose 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, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs;*

In relation to the term ‘business or professional affairs’, the FOI Guidelines relevantly provide as follows:

The use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs. The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.

The internal affairs of an organisation include its governance processes, the processes by which organisations are directed and controlled. For example, documents relating to member voting processes are not exempt under s 47G, because member voting forms part of the governance affairs of an organisation.⁴

I am satisfied that disclosure of parts of Document 1 would disclose the business affairs of an organisation and that disclosure would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

I am therefore satisfied that parts of Document 1 are conditionally exempt under section 47G(1)(a) 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, [6.192] – [6.193] (footnotes omitted).

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.

I consider that disclosure of the conditionally exempt information in parts of Document 1 could reasonably be expected to:

- harm the interests of an organisation in respect of its lawful business affairs; and
- prejudice the protection of individuals' rights to privacy.

Balancing the public interest

In weighing the public interest factors for and against disclosure, I note the FOI Guidelines provide that the pro-disclosure principle declared in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure.⁸

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

⁶ FOI Guidelines, [6.19].

⁷ FOI Guidelines, [6.22].

⁸ FOI Guidelines, [6.8].

Notwithstanding the weighting towards disclosure, in this case, I attach more weight to the public interest factors against disclosure. In weighing the factors, I consider the public interest against disclosure outweighs the public interest for disclosure.

I am therefore satisfied that disclosing the conditionally exempt information in Document 1 would, on balance, be contrary to the public interest.

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 indicated in the schedule at Attachment A, the requested documents contain exempt and/or irrelevant material. The irrelevant material is as follows:

- material subject to the Department's redaction policy advised to you on 5 March 2021 namely:
 - any person's signature;
 - names and contact details of Australian Public Service officers not in the Senior Executive Service;
 - the mobile or direct numbers of SES officers; and
 - the names and contact details of Ministerial staff at a level below Chief of Staff; and
- material that is not within the scope of the FOI request, that is, material which does not constitute 'Palladium Group's submission' or 'submissions and testimonials from other entities' regarding Palladium's eligibility 'for the HOSM with Philippines clasp'.

I find that it is reasonably practicable to copy the documents with the exempt or irrelevant information deleted, and that you would wish to be granted access to those documents with the deletions.

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

A handwritten signature in black ink, appearing to read 'Peter Rush', written in a cursive style.

Peter Rush
Assistant Secretary
Parliamentary and Government Branch

17 May 2021