



## Australian Government

### Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT  
BARTON

FOI/2021/053

#### *FREEDOM OF INFORMATION ACT 1982 (Cth)*

**REQUEST BY:** M Parkins

**DECISION BY:** Ms Maia Ablett  
A/g Assistant Secretary  
Legal Policy Branch

**By email:** foi+request-7197-e3569f7d@righttoknow.org.au

Dear M Parkins

I refer to your request, dated 3 April 2021, to the Department of the Prime Minister and Cabinet (the **Department**), for access under the *Freedom of Information Act 1982 (Cth)* (the **FOI Act**) to the following:

*Under the FOI Act I request a copy of any email in Peter Rush's (Assistant Secretary – Parliamentary and Government) email client that:*

*-was sent or received in the 2 month date range of 2 February 2021 to 2 April 2021 (inclusive); and*

*-contains the word 'Brittany'.*

#### **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 20 documents relevant to the terms of your FOI request (the **requested documents**). These documents do not include:

- duplicate material;
- a statement on the public record and maintained by the Department for reference purposes;

- emails containing the Prime Minister's press conference transcripts as these are on the public record and maintained by the Department for reference purposes; or
- emails containing media articles and summaries as these are on the public record and maintained by the Department for reference purposes.

## Decision

I have decided to grant access to two documents in part (Documents 3 and 11).

I have decided to refuse access to the remaining 18 requested documents on the basis of those documents being exempt from release under sections 47C, 47E(d) and 47F of the FOI Act.

Further information is set out in the schedule of documents at Attachment A.

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

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

## Reasons

### ***Section 47C of the FOI Act – deliberative processes***

Section 47C of the FOI Act provides that:

- (1) A document is conditionally exempt if its disclosure under this Act 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:*
- (a) an agency; or*
  - (b) a Minister; or*
  - (c) the Government of the Commonwealth.*

I consider that parts of the requested documents contain internal departmental advice and opinions relating to processing media inquiries, processing freedom of information requests and parliamentary proceedings.

I am satisfied that the above-mentioned advice and opinions is deliberative material which is conditionally exempt under section 47C of the FOI Act.

### ***Section 47E(d) of the FOI Act – certain operations of agencies***

Section 47E(d) provides that:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to:*

*.....*

*have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

I consider that parts of the requested documents contain information which relate to internal departmental processes of advising on media enquiries, ministerial correspondence, freedom of information requests and senate estimates briefing documents.

I am satisfied that the disclosure of this information could reasonably be expected to substantially and adversely affect these processes and the proper and efficient operations of the Department. I am therefore satisfied that the release of this information is conditionally exempt under section 47E(d) of the FOI Act

***Section 47F of the FOI Act – 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).*

‘Personal information’ under the FOI Act has the same meaning as in the *Privacy Act 1988* i.e.:

*... 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 a 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.

I am satisfied that the requested documents contain information, which if disclosed which would involve the unreasonable disclosure of certain individuals’ personal information. I am therefore satisfied that the disclosure of this personal information is conditionally exempt under section 47F of the FOI Act.

***Section 11B of the FOI Act – public interest test***

Having found that the requested documents are conditionally exempt under sections 47C, 47E(d) and 47F of the FOI Act, I am now required to apply the public interest test outlined in section 11B of the FOI Act. Noting that decision makers are required to grant access to conditionally exempt documents, unless to do so would be against the public interest, the public interest test requires me to balance public interest factors for and against access to the requested documents.

I consider that the following factors favour disclosure of the requested documents:



- access would inform the community of the Government's operations, including, in particular, the policies, rules, guidelines and practices followed by the Government in its dealings with the community; and
- access would promote the objects of the FOI Act.

The FOI Act does not provide for any public interest factors weighing against disclosure that decision makers may consider; however paragraph 6.22 of the FOI Guidelines contains a non-exhaustive list of factors against disclosure. I have had regard to this provision in making my decision.

I consider that the following factors favour non-disclosure of the requested documents:

- access could reasonably be expected to prejudice certain internal departmental processes, which are essential to the proper functioning of the Department, including advising on media enquiries, ministerial correspondence, parliamentary matters, and the processing of freedom of information requests and
- access could reasonably be expected to unreasonably prejudice several persons' right to privacy.

After careful consideration of all relevant factors, I have decided that the factors in favour of disclosure are outweighed by the factors against disclosure, and therefore disclosure of the documents would be contrary to the public interest.

Therefore, with the exception of parts of Documents 3 and 11, I have decided to refuse access to the requested documents under the FOI Act.

In reaching this decision, I have not taken into account any of the irrelevant factors outlined in section 11B(4) of the FOI Act.

### ***Section 22 of the FOI Act – irrelevant material***

Section 22 of the FOI Act provides that irrelevant and exempt 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.

On 14 April 2021, the Department advised you that the following information would be treated as irrelevant material and redacted from any documents for release, unless you advised the Department otherwise:

- any person's signature;
- the names and contact details of Australian Public Service (APS) officers not in the Senior Executive Service (SES);
- the mobile or direct numbers of SES officers; and
- the names and contact details of Ministerial staff at a level below Chief of Staff.

I find that it is reasonably practicable to provide an edited copy of the requested documents with the irrelevant and exempt information deleted, and that you would wish to be granted access to the requested documents with the deletions.

### **Processing and access charges**

I have decided not to impose charges to process your request.

### **Publication of documents**

Under section 11C of the FOI Act, the Department will arrange to publish the documents released to you on the Department's FOI Disclosure Log.

### **Review rights**

Information about your rights of review can be found on the website of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

### **Complaint rights**

Information about your complaint rights can be found on the website of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely



Maia Ablett  
A/g Assistant Secretary  
Legal Policy Branch

5 July 2021

ATTACHMENT A - SCHEDULE OF DOCUMENTS

FOI

Document	Decision
1	Exempt in full
2	Exempt in full
3	Release with irrelevant material redacted under section 22 and exempt material redacted under 47E(d)
4	Exempt in full
5	Exempt in full
6	Exempt in full
7	Exempt in full
8	Exempt in full
9	Exempt in full
10	Exempt in full
11	Release with irrelevant material redacted under section 22.
12	Exempt in full
13	Exempt in full
14	Exempt in full
15	Exempt in full
16	Exempt in full
17	Exempt in full
18	Exempt in full
19	Exempt in full
20	Exempt in full