



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2021/070

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

DECISION BY: Maia Ablett
Acting Assistant Secretary
Legal Policy Branch

By email: foi+request-7269-494de925@righttoknow.org.au

Dear Trav S

I refer to your email of 6 May 2021 in which you made a request (the **FOI request**) under the *Freedom of Information Act 1982* (the **FOI Act**) to the Department of the Prime Minister and Cabinet (the **Department**) in the following terms:

Please provide:

- 1. a document listing the FOI reference number, title and date of all FOI requests seeking information related to the Humanitarian Overseas Service Medal.*
- 2. a document conveying the contact details for the office, branch or area within Government responsible for investigating breaches of the Prime Minister's 2018 Statement of Ministerial Standards.*

On 14 May 2021, the Department wrote to you to advise that your request did not meet the requirements of a valid request under section 15 of the FOI Act, on the basis that your request did not provide such information as is reasonably necessary to enable the Department to identify the documents sought. The Department sought further information regarding your request.

On 28 May 2021, you responded as follows:

Regarding Part 1

We seek a document listing all Humanitarian Overseas Service Medal related FOI requests made to PM&C from 1 Jan 2020 to today's date. If related FOI requests have been forwarded to PM&C from other Department's we would appreciate those being included.

Regarding Part 2

We seek a document providing a current point of contact with which to report and discuss potential breaches of the Statement of Ministerial Standards. Unfortunately

Chapter 7 of the Standards does not provide this detail and we would be grateful for your assistance. Unfortunately the Department has not replied to several administrative requests for this information we have made in recent months.

Therefore, the Department has taken your request to be for the following:

- 1. We seek a document listing [the FOI reference number, title and date of] all Humanitarian Overseas Service Medal related FOI requests made to PM&C from 1 Jan 2020 to today's date. If related FOI requests have been forwarded to PM&C from other Department's we would appreciate those being included.*
- 2. We seek a document providing a current point of contact with which to report and discuss potential breaches of the Statement of Ministerial Standards. Unfortunately Chapter 7 of the Standards does not provide this detail and we would be grateful for your assistance.*

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.

Relevant documents

The Department has undertaken a reasonable search of its records and created a document that meets the terms of part 1 of your request (the **requested document**), in accordance with section 17 of the FOI Act.

The Department did not identify a document meeting the terms of part 2 of your request.

Decision

For part 1 of your request, I have decided to grant access in part to the requested document on the basis that it contains material that is conditionally exempt under sections 47F (personal privacy) and 47G (business, commercial or professional affairs) of the FOI Act, and its disclosure would be contrary to the public interest.

For part 2 of your request, I have decided to refuse your request under section 24A(1)(b)(ii) of the FOI Act, on the basis that the Department has taken all reasonable steps to locate the document you have requested, and the document does not exist.

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

- the terms of your request;
- the requested documents;
- searches undertaken by the Department regarding part 2 of your request;
- the FOI Act; and
- the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*' (the **FOI Guidelines**).

My reasons for this decision are set out below.

Part 1 of your request

Section 17(1) of the FOI Act provides as follows:

(1) *Where:*

- (a) *a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;*
- (b) *it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and*
- (ba) *it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and*
- (c) *the agency could produce a written document containing the information in discrete form by:*
 - (i) *the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or*
 - (ii) *the making of a transcript from a sound recording held in the agency;*

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

The document you requested in part 1 of your request did not exist in a discrete form at the time of your request. However, following reasonable searches and using a platform ordinarily used by the Department for retrieving and collating stored information about its FOI requests, the Department has produced a document containing the information you requested in part 1 of your request.

I have decided to treat part 1 of your request as if it were a request for access to the document created in accordance with section 17 of the FOI Act.

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 state that key factors for determining whether disclosure is unreasonable include whether:

- 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
- any 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:

- 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 and
- whether disclosure of the information might advance the public interest in promoting transparency and integrity in government.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 the requested document contains the personal information of an identified individual. I also consider that the following factors indicate that disclosure of the personal information would be unreasonable:

- the individual is likely to oppose disclosure of their information;
- the release of the personal information would cause stress to the individual;
- no public purpose would be achieved through release;
- the personal information is not well known; and
- the personal information is not available from publicly accessible sources.

I am therefore satisfied that the personal information in the requested document is conditionally exempt from release, in accordance with section 47F(1) of the FOI Act, as disclosure would involve the unreasonable disclosure of personal information of an individual.

¹ FOI Guidelines, [6.142].

² FOI Guidelines, [6.143].

³ FOI Guidelines, [6.144].

Section 47G - business, commercial or professional affairs

Section 47G(1)(a) 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;

Parts of the requested document contain information concerning an organisation in respect of its business, professional or commercial affairs. I am satisfied that disclosure of this information would, or could reasonably be expected to, unreasonably affect the organisation in respect of its lawful business, professional and commercial affairs.

Accordingly, I am satisfied that the relevant parts of the requested document are conditionally exempt under section 47G of the FOI Act.

Public Interest Test

Section 11A(5) of the FOI Act provides that a conditionally exempt document must 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.

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 and the FOI Guidelines set out four factors favouring disclosure which must be considered if relevant, i.e. whether disclosure would:⁴

⁴ See section 11B(3) of the FOI Act and FOI Guidelines, [6.17] and [6.19].

- 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.

In my view, disclosure would, in this case, promote the objects of the FOI Act.

Factors against disclosure

The FOI Guidelines contain a list of factors that may, depending on the circumstances, indicate that disclosure would operate against the public interest.

Having regard to those factors, I consider that disclosure of the conditionally exempt material in parts of the requested document could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;
- harm the interests of an individual; and
- harm the lawful business interests of an organisation in respect of their lawful business, commercial or financial affairs.

Balancing the public interest

After careful consideration of all relevant factors, I have decided that the factor in favour of disclosure is outweighed by the factors against disclosure. Accordingly, I am of the view that disclosure of the conditionally exempt material in the requested document would be contrary to the public interest.

Part 2 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.*

I consulted with the relevant departmental line area as to whether a document within the scope of part 2 of your request exists. The relevant departmental line area has confirmed that no document relevant to this part of your request exists.

I am therefore satisfied that all reasonable steps have been taken to find the document you requested, and that the document does not exist. I have therefore decided to refuse this part of your request under section 24A(1)(b)(ii) of the FOI Act.

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 a request. 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/make-an-foi-complaint/>.

Yours sincerely

A handwritten signature in black ink that reads "Maia Ablett". The signature is written in a cursive, flowing style.

Maia Ablett
Acting Assistant Secretary
Legal Policy Branch

28 June 2021