



Australian Government
Department of Finance and Deregulation

Reference: FOI 13/32
Contact: FOI Team
Telephone: 02 6215 1783
e-mail: foi@finance.gov.au

Margo Kingston

via email: foi+request-73-309e8af4@righttoknow.org.au

Dear Ms Kingston

Freedom of Information Request – FOI 13/32

I refer to your email to the Department of Finance and Deregulation (Finance) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

All correspondence to or from Mr Peter Slipper between April 2012 – January 2013 concerning travel costs incurred by Mr Slipper;

All correspondence to or from any Member of Parliament in relation to requests to repay travel costs deemed outside entitlement in accordance with what is described as “the Minchin Protocol” between January 2010 to January 2013.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

I have decided to:

- release 7 documents in full;
- release 30 documents in part on the basis of the exemption for certain operations of an agency (section 47E), personal information (section 47F) and business information (section 47G); and
- refuse access to 7 documents in full under paragraph 37(2)(a) documents affecting enforcement of law and protection of public safety.

The documents are identified in the Schedule at [Attachment A](#).

Reasons for Decision

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

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act;
- submissions received from third parties; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

In providing you with the reasons for my decision, I am mindful of subsection 26(2) of the FOI Act, which provides that this letter is *not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document*.

Section 37 – Documents affecting enforcement of law and protection of public safety

I am of the view that 7 documents (documents 10 and 12-17) are exempt from release on the basis that release of the documents may prejudice the fair trial of a person or the impartial adjudication of a particular case (paragraph 37(2)(a) of the FOI Act).

A copy of section 37 of the FOI Act is at [Attachment B](#).

The documents in question relate to a current prosecution. Premature release of the documents, and the subsequent media interest this would generate, could prejudice a fair trial. For this reason, I have decided not to release the documents. The Australian Federal Police have been consulted regarding the application of this exemption to the relevant documents.

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act allows for the deletion of exempt or irrelevant matter from a document that may allow for an edited form of the document to be released. I have decided that edited copies of certain documents can be released to you under this category.

Accordingly, I have decided to provide you with access to 30 documents with the exempt and irrelevant information redacted.

A copy of section 22 is at [Attachment C](#).

The redacted information within the documents contains material that I have determined to be exempt under the provisions of the FOI Act. Specifically, the relevant exemption provisions are as follows.

Section 47F – Personal Privacy

Section 47F of the FOI Act relevantly provides:

47F (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person ...*

A copy of section 47F is at [Attachment D](#).

I have decided that release of certain parts of documents 4A, 4B, 4C, 7A and 7B as identified in the table below, would involve the unreasonable disclosure of personal information.

Item	Information	Documents
(i)	information identifying a junior staff member of a Member of Parliament	4A, 4B, 4C
(ii)	information relating to a private commercial arrangement	4A, 4B, 4C
(iii)	information identifying persons accompanying a Member of Parliament on overseas travel	7A
(iv)	bank and credit card statements, credit card details and identifying financial institution information of a Member of Parliament	7B

Is it personal information?

For information to be conditionally exempt, I must first be satisfied that the information is personal information. If the documents are one to which personal information applies, I must then address the issue of whether it would be unreasonable to disclose the personal information.

Section 4 of the FOI Act provides a definition of 'personal information'. It is defined as 'information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

Item (i) of the table contains the name and employment relationship of a junior officer. Item (ii) contains the names and commercial relationship between third parties. Item (iii) contains the names of persons accompanying a Member of Parliament on overseas travel. Item (iv) contains the name and banking information of a third party, including credit card numbers. As such, I am satisfied that the information is 'personal information' within the meaning of the FOI Act.

Is disclosure unreasonable?

Subsection 47F(2) of the FOI Act provides that in determining whether the disclosure of a document would involve the unreasonable disclosure of personal information, an agency must have regard to the following:

- 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 considers relevant.

In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all circumstances, including the nature of the information that would be disclosed.

Paragraphs 6.131 and 6.132 of the FOI Guidelines also identify the following factors as relevant to determining if disclosure of personal information would be unreasonable:

- the author of the document is identifiable;
- the documents contain third party personal information;
- release of the documents would cause stress on the third party;
- no public purpose would be achieved through release;
- the nature of the information, that is, whether it is common or disclosure would result in serious consequences;
- how the information was obtained, that is, covertly, in confidence or using information gathering powers;
- the current relevance or age of the information; and
- whether it would shed light on the workings of government.

I do not consider that any of the information as described in the table is well known; nor is it available from publicly accessible sources.

In coming to my decision, I have taken into account that release of the documents would serve the public purpose of allowing scrutiny of the use of publicly-funded entitlements. It would also shed light on the workings of government in allowing insight into the administration of entitlements. However, I am of the view that the release of the information identified in the table would not contribute significantly to the attainment of these purposes.

Release of this information would, however, place considerable stress on the third parties to which it relates. I am therefore of the view that release of this information would involve the unreasonable disclosure of personal information. It is therefore conditionally exempt from release.

The public interest test is dealt with below.

Section 47G – Business

I have also considered whether or not the information relating to a private commercial arrangement in documents 4A, 4B and 4C (item ii in the table) is conditionally exempt from disclosure under section 47G of the FOI Act.

A copy of section 47G is at [Attachment E](#).

The information concerns a person's business or professional affairs and therefore engages section 47G. The relevant parts of the document relate to the commercial relationship between a Member of Parliament and a commercial entity. The information is a private commercial arrangement that has not been publicly disclosed. The information divulges part of the commercial bargain reached by the parties. Release of the information could reasonably be expected to adversely affect a person's business affairs. It is therefore conditionally exempt under paragraph 47G(1)(b) of the FOI Act.

Public Interest Test – sections 47F and 47G

Having formed the view that the information identified in the table above is conditionally exempt under section 47F or 47G, I am now required to consider whether disclosure of this information would be contrary to the public interest. Under section 11A, access must generally be given to a conditionally exempt document unless to do so would be contrary to the public interest.

In accordance with section 11B(3) of the FOI Act, I have considered the following factors favouring disclosure of the document:

- *Release of the relevant parts of the documents would promote the objects of the Act:* I note that release would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible (subsection 3(1), FOI Act). Release would also increase recognition that information held by the Government is to be managed for public purposes, and is a national resource (subsection 3(3)). However, I do not believe that release of the information identified in the table would contribute towards: increasing public participation in Government processes, with a view to promoting better-informed decision-making (paragraph (3)(2)(a), FOI Act). Nor do I believe that it would increase scrutiny, discussion, comment and review of the Government's activities (paragraph 3(2)(b), FOI Act);
- *Release would inform debate on a matter of public importance:* The use and administration of publicly funded entitlements is a matter of public importance. However, I do not believe that release of the information in the table would significantly inform public debate on this matter. Release of this information would not inform the public debate to a greater degree than the release of the documents without this information; and
- *Release would promote effective oversight of public expenditure:* I have given particular consideration to whether the release of the bank and credit card statements in document 7A would promote the effective oversight of public expenditure. These statements are attached to a claim for reimbursement. However, the amounts claimed are also outlined in the 'Certification of official travel' form in that document. As these claims for reimbursement are detailed in other parts of the document, release of the credit card and bank statements would not provide additional oversight of public expenditure. Release of the banking and credit card details of the third party could reasonably be expected to prejudice the protection of an individual's right to privacy. I do not believe that release of the other information identified in the table would assist in the promotion of the effective oversight of public expenditure.

I have also considered the following factors against disclosure of the document:

- *Release could reasonably be expected to prejudice the protection of an individual's right to privacy:* the right to privacy is a strong consideration and compelling reasons need to exist in order to override that right.

The information identified in item (i) of the table identifies a junior staff member of a third party. I do not consider that any of the factors favouring disclosure are enlivened in relation to the junior staff member. Rather, I consider that the release of this information could reasonably be expected to prejudice an individual's right to privacy.

The information identified in item (ii) of the table identifies a private commercial relationship between a Member of Parliament and a commercial entity. The relevant information relates to the commercial relationship between the two parties. The information divulges part of the terms of a commercial relationship. I consider that release of this information could reasonably be expected to adversely affect a person's business affairs and their right to privacy.

The information identified in item (iii) is the names of person's travelling with a Member of Parliament on overseas travel. The travel is within entitlement and the names of the travel party are not publicly released during the regular six monthly publication of expenditure by Finance. Information about the amount of travel taken by members of parliament is publicly available. This general information serves the public interest of enabling comment on matters of public importance and government expenditure. However, release of the names of the travel companions of members of parliament would not promote these purposes and would do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed.

The information identified in item (iv) is personal information about an individual's personal banking details and credit card information including credit card numbers. This is a sensitive category of personal information. Release of the document would be likely to place stress on the individual concerned. Given the fact that the information contains credit card numbers there is the potential to expose the person to misuse of this information if it is released to the public. The information contained in the document was given in a context in which there was a reasonable expectation of privacy. This information is not publicly known and was collected in the establishment of an entitlement to reimbursement of travel costs which may have had the expectation that it would not be released.

Given consideration of the matters above, I consider that release of the information identified in the table would prejudice the protection of the relevant individual's right to privacy.

- The relevant information in the documents is not otherwise publicly known. Release of the information could reasonably be expected to place stress on the individuals concerned, release could reasonably be expected to harm the interests of individuals;
- Release of the information in item (ii) of the table could reasonably be expected to damage the commercial activities of an individual; and
- Disclosure could reasonably be expected to impede the free flow of information to Finance in relation to administration of parliamentary entitlements particularly if sensitive information such as credit card details and private commercial relationships is released to the public.

Release of the information identified in the table would serve the public interest in promoting the objects identified in subsections 3(1) and 3(3) of the FOI Act. However, I believe that, in this instance, the factors in favour of disclosure are outweighed by the prejudice to the protection of the relevant individuals' rights to privacy. Accordingly, I have determined that the information identified in the table is exempt from release on the basis of section 47F or 47G of the FOI Act.

I have not considered the irrelevant factors, which are mentioned in section 11B(4) of the FOI Act. A copy of section 11B is at Attachment G.

Redaction of Junior Officer's names and contact details

The parts of the documents containing the names and contact details of junior departmental officials are exempt from release on the basis of sections 22, 47E(d) and 47F of the FOI Act. This information has been redacted from documents 7A, 7B, 7C, 7D, 8, 9 and 18-38.

Section 47E(d) –proper and efficient conduct of the operation of an agency

The disclosure of staff members' full names and contact details could reasonably be expected to have a substantial adverse effect on how staff members manage their relationship with the public and their workload. The ability for staff members to manage their relationship with the public could be adversely affected as the department cannot guarantee that the disclosure of their full names through an FOI request would not be made to the world at large. Further, the ability for staff members to manage their workload could be adversely effected if the disclosure of their full names or contact details led to persistent contact from the public.

Individual departmental officers do not have the ability to field all of this correspondence themselves and it would detract from the efficiency of those officers in completing their work. Releasing the direct contact details for individual departmental officers would compromise the ability of those officers to complete their work and could potentially expose them to harassment from outside the department. Release of the contact details to the world at large under the FOI process could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency by taking the individual departmental officers away from their work when there are a number of different methods in which members of the public can contact the department.

I am satisfied that the relevant documents or parts of the documents are conditionally exempt in part under section 47E(d). A copy of section 47E(d) is at Attachment F. The public interest component of this test is addressed below.

Section 47F – Personal Privacy

The documents with staff names contain personal information as there is information about third parties whose identity is apparent from the information. Subsection 47F(2) of the FOI Act provides that in determining whether the disclosure of a document would involve the unreasonable disclosure of personal information, an agency must have regard to the following:

- 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 considers relevant.

There would be an unreasonable disclosure of personal information if the staff names and contact details were made publicly available. The personal information in the documents is not well known, it is unlikely that the individuals to which the information relates is known to be associated with the matter and the relevant staff members are not senior executive staff. The department also considers that the release of documents containing staff member's names may cause stress on the staff if release of the names led to members of the public contacting staff directly and compromised the ability of those officers to complete their work. Consequently, I am satisfied that the documents containing staff members names and contact details are conditionally exempt from disclosure under section 47F of the FOI Act as there would be an unreasonable disclosure of personal information.

I am satisfied that the relevant documents or parts of the documents are conditionally exempt in part under section 47F. The public interest component of this test is addressed below.

Public Interest Test

In accordance with section 11B(3) of the FOI Act, and having regard to the Information Commissioner Guidelines, I do not consider that any of the factors favouring disclosure are enlivened in relation to the staff names and contact details. Rather, I consider that the release of this information could reasonably be expected to prejudice an individual's right to privacy and the department's ability to manage contact with the public and the work load of staff.

A copy of section 11B is at Attachment G.

In the circumstances, I have determined that the factors against disclosure outweigh the factors in favour of disclosure in relation to the relevant parts of the document. I also consider this information to be irrelevant to the request under section 22 of the FOI Act.

Charges

On 11 April 2013, Finance sent you an estimate of charges (\$442.01) in relation to the processing of your request. I have reviewed the estimate of charges provided to you and confirm that the estimated cost is a true account of the actual time spent on your request.

Finance has received your payment of the charges in full.

Review and Appeal Rights

You are entitled to request an internal review of my decision. Your appeal rights are set out in Attachment H.

As affected third parties have contended that the disclosure of their personal information would be unreasonable and objected to release of some of the documents, I am required, in accordance with section 27A(2) of the FOI Act, to advise those parties of my decision to release parts of the documents and give them the opportunity to seek a review of the decision either by Finance or the Office of the Australian Information Commissioner (OAIC), insofar as those documents relate to them.

The third parties have 30 days in which to seek review or lodge an appeal. The documents that I have decided to release cannot be released to you until this time period has expired, or where the third parties lodge an internal review or appeal to the OAIC, until that review or appeal has been completed.

Publication

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act; and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log (www.finance.gov.au) as soon as possible after they are released to you, usually 2 – 3 working days.

If you have any questions, please contact the Finance FOI Team.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Suzanne Pitson', with a horizontal line extending to the right.

Suzanne Pitson
Acting First Assistant Secretary
Ministerial & Parliamentary Services Division

31 May 2013

SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. 13/32

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision*	Comment
<i>All correspondence to or from any Member of Parliament in relation to requests to repay travel costs deemed outside entitlement in accordance with what is described as "the Minchin Protocol" between January 2010 to January 2013.</i>							
1	13/01/2010	1	Senator the Hon Joe Ludwig	Dr Dennis Jensen MP	Copy of reply letter dated 13 January 2010, from Senator Ludwig to Dr Jensen acknowledging that Dr Jensen's flight costs are within entitlement.	R	
There was an error in the numbering of documents. No Document 2 exists.							
3A	17/03/2010	18	Mr David Tune PSM, Secretary of the Department of Finance and Deregulation	The Hon Peter Slipper MP	Copy of letter together with two Attachments dated 17 March 2010, from Mr Tune to Mr Slipper. <ul style="list-style-type: none"> Attachment A – Protocol followed when an allegation is received of alleged misuse of entitlement by a Senator or Member (Minchin Protocol). Attachment B – Details of fuel usage. 	R	
3B	19/04/2010	1	Mr Stephen Taylor, Branch Manager, Legal Services, Corporate and Parliamentary Services	The Hon Peter Slipper MP	Copy of letter dated 19 April 2010, from Mr Taylor to Mr Slipper.	R	
3C	Undated (Received 26/05/2010)	2	The Hon Peter Slipper MP	Mr David Tune PSM	Copy of undated letter (received by the Department on 26 March 2010), from Mr Slipper to Mr Tune.	R	

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision*	Comment
4A	19/08/2010	2	Ms Deborah Lopert, Acting Assistant Secretary, Legal Services Branch	The Hon Tony Abbott MP, Leader of the Opposition	Copy of letter dated 19 August 2010, from Ms Lopert to Mr Abbott.	D 22	Material outside the scope of the request. Document cannot be released until third party review rights have expired
4B	29/10/2010	3	Ms Peta Credlin, Chief of Staff, Office of the Leader of the Opposition	Ms Deborah Lopert	Copy of letter, together with one attachment, dated 29 October 2010, from Ms Credlin to Ms Lopert. • <u>Attachment</u>	D 47F, 47G	Document cannot be released until third party review rights have expired
4C	10/01/2011	2	The Hon Gary Gray AO MP	The Hon Tony Abbot MP	Copy of letter dated 10 January 2011, from Mr Gray to Mr Abbott in relation to Ms Credlin's letter.	D 47F, 47G	Document cannot be released until third party review rights have expired
5	04/09/2012	2	The Hon Gary Gray AO MP	The Hon Warren Entsch MP	Copy of letter dated 4 September 2012, from Mr Gray to Mr Entsch.	R	
6	Undated (Received 19/09/2011)	2	The Hon Warren Entsch MP	The Hon Gary Gray AO MP	Copy of undated reply letter (received by the Department on 19 September 2012), from Mr Entsch to Mr Gray.	R	

All correspondence to or from Mr Peter Slipper between April 2012 – January 2013 concerning travel costs incurred by Mr Slipper, excluding any material regarding any FOI correspondence;						
7A	11/01/2013	6	Entitlements Manager, Ministerial and Parliamentary Services	The Hon Peter Slipper MP	Copy of email, together with attachment, dated 11 January 2013, from Finance to Mr Slipper. <ul style="list-style-type: none"> Attachment – Final statement of expenses list. 	D 22, 47E(d), 47F Document cannot be released until third party review rights have expired
7B	27/06/2012	14	The Hon Peter Slipper MP	Ministerial and Parliamentary Services	Copy of letter, together with Attachments dated 27 June 2012, from Mr Slipper.	D 22, 47E(d), 47F Document cannot be released until third party review rights have expired
7C	16/07/2012	1	Entitlements Manager, Ministerial and Parliamentary Services	The Hon Peter Slipper MP	Copy of email dated 16 July 2012, to Mr Slipper.	D 22, 47E(d), 47F Staff names and contact details redacted
7D	23/03/2012	5	Entitlements Manager, Ministerial and Parliamentary Services	The Hon Peter Slipper MP	Copy of email, together with Attachment, dated 23 March 2012 to Mr Slipper. <ul style="list-style-type: none"> Attachment – Calculation of Official Travel – Minor Official Expense Allowance and Certification of Official Travel form. 	D 22, 47E(d), 47F Staff names and contact details redacted
8	29/06/2012	3	Entitlements Manager, Ministerial and Parliamentary Services	The Hon Peter Slipper MP	Copy of email, together with Attachment, dated 29 June 2012 to Mr Slipper. <ul style="list-style-type: none"> Attachment – Calculation of Official Travel – Minor Official Expense Allowance and Certification of Official Travel form. 	D 22, 47E(d), 47F Staff names and contact details redacted
9	24/01/2013	1	Ministerial and Parliamentary Services.		Extract from EMS - list of Travelling Allowance claim forms.	D 22, 47E(d), 47F Staff names and contact details redacted

10	28/09/2012	1	[REDACTED]			E 37	
11	01/10/2012	1				R	Copy of reply letter dated 1 October 2012, from Ms Mason to Mr Slipper.
12	22/10/2012	1				E 37	
13	06/11/2012	2				E 37	
14	16/11/2012	2				E 37	
15	27/11/2012	2				E 37	
16	07/12/2012	1				E 37	
17	17/12/2012	2				E 37	
18	04/04/2012 – 02/05/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 431734.	D 22, 47E(d), 47F	Staff names and contact details redacted
19	04/04/2012 – 30/04/2012	2	Various – vmware (call register)		Copy of Call Report – Call Number 432291.	D 22, 47E(d), 47F	Staff names and contact details redacted
20	26/04/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 437233.	D 22, 47E(d), 47F	Staff names and contact details redacted
21	30/04/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 437861.	D 22, 47E(d), 47F	Staff names and contact details redacted
22	08/05/2012	2	Various – vmware (call register)		Copy of Call Report – Call Number 440112..	D 22, 47E(d), 47F	Staff names and contact details redacted

Attachment A

23	14/05/2012 – 16/05/2012	2	Various – vmware (call register)		Copy of Call Report – Call Number 441762.	D 22, 47E(d), 47F	Staff names and contact details redacted
24	14/05/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 441855.	D 22, 47E(d), 47F	Staff names and contact details redacted
25	16/05/2012	2	Various – vmware (call register)		Copy of Call Report – Call Number 443868.	D 22, 47E(d), 47F	Staff names and contact details redacted
26	18/05/2012 – 19/06/2012	2	Various – vmware (call register)		Copy of Call Report – Call Number 443727.	D 22, 47E(d), 47F	Staff names and contact details redacted
27	22/05/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 444555.	D 22, 47E(d), 47F	Staff names and contact details redacted
28	22/05/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 444556.	D 22, 47E(d), 47F	Staff names and contact details redacted
29	24/05/2012 – 28/05/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 445748.	D 22, 47E(d), 47F	Staff names and contact details redacted
30	25/05/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 446062.	D 22, 47E(d), 47F	Staff names and contact details redacted
31	07/06/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 450286.	D 22, 47E(d), 47F	Staff names and contact details redacted
32	15/06/2012 – 19/06/2012	2	Various – vmware (call register)		Copy of Call Report – Call Number 452750.	D 22, 47E(d), 47F	Staff names and contact details redacted
33	13/08/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 470943.	D 22, 47E(d), 47F	Staff names and contact details redacted
34	31/10/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 491681.	D 22, 47E(d), 47F	Staff names and contact details redacted

R = Release, D = Release with Deletions, E = Exempt

Attachment A

35	20/11/2012 – 21/11/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 497558.	D 22, 47E(d), 47F	Staff names and contact details redacted
36	22/11/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 498422.	D 22, 47E(d), 47F	Staff names and contact details redacted
37	23/11/2012 – 26/11/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 498752.	D 22, 47E(d), 47F	Staff names and contact details redacted
38	20/12/2012	1	Various – vmware (call register)		Copy of Call Report – Call Number 506181.	D 22, 47E(d), 47F	Staff names and contact details redacted

FREEDOM OF INFORMATION ACT 1982 - SECTION 37

37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or

(c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

(c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:

(a) witnesses; or

(b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or

(c) any other people who, for any other reason, need or may need, such protection.

(3) In this section, **law** means law of the Commonwealth or of a State or Territory.

FREEDOM OF INFORMATION ACT 1982 - SECTION 22

Access to edited copies with exempt or irrelevant matter deleted

Scope

1. This section applies if:
 - a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

2. The agency or Minister must:
 - a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - b) give the applicant access to the edited copy.

Notice to applicant

3. The agency or Minister must give the applicant notice in writing:
 - a) that the edited copy has been prepared; and
 - b) of the grounds for the deletions; and
 - c) if any matter deleted is exempt matter--that the matter deleted is exempt matter because of a specified provision of this Act.

Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

FREEDOM OF INFORMATION ACT 1982 - SECTION 47F

Public interest conditional exemptions – personal privacy

General rule

1. 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).
2. In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - a) the extent to which the information is well known;
 - b) 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;
 - c) the availability of the information from publicly accessible sources;
 - d) any other matters that the agency or Minister considers relevant.
3. Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

4. Subsection (5) applies if:
 - a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
5. The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - b) is to be nominated by the applicant.
6. The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
7. In this section:

"qualified person" means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- a) a medical practitioner;
- b) a psychiatrist;
- c) a psychologist;
- d) a counsellor;
- e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

FREEDOM OF INFORMATION ACT 1982 - SECTION 47G

Public interest conditional exemptions—business

(1) 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; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

FREEDOM OF INFORMATION ACT 1982 - SECTION 47E

Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

FREEDOM OF INFORMATION ACT 1982 - SECTION 11B

Public interest exemptions--factors

Scope

1. This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
2. This section does not limit subsection 11A(5).

Factors favouring access

3. Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - b) inform debate on a matter of public importance;
 - c) promote effective oversight of public expenditure;
 - d) allow a person to access his or her own personal information.

Irrelevant factors

4. The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - d) access to the document could result in confusion or unnecessary debate.

Guidelines

5. In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.



Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance and Deregulation (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information Commissioner

GPO Box 2999

CANBERRA ACT 2601

Email: enquiries@oaic.gov.au

Fax: 02 9284 9666

In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see FOI fact sheet 13 – *Freedom of Information: How to make a complaint*.

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601

Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal Services Branch
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
PARKES ACT 2600
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html