



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI

FOI/2021/086

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Trav S

DECISION BY: David Belgrove
Acting Assistant Secretary
Parliamentary and Government Branch

By email: foi+request-7348-2d8c71b6@righttoknow.org.au

Dear Trav S

I refer to your email, dated 28 May 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:

On 27 April 2017, HK Logistics Pty Ltd (a Palladium company) wrote a letter to PM&C in response to PM&C's:

"kind enquiry as to our staff deployed in support of the Australian Government's emergency relief assistance. Specifically responses from the 2013 Typhoon Haiyan in the Phillipines, [s22 redacted], and [s22 redacted]."

Please provide a copy of PM&C's enquiry to HK Logistics.

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.

Document meeting the terms of your request

The Department has identified one document relevant to the terms of your FOI request (the **requested document**).

Decision

I have decided to grant access, in part, to the requested document, with material exempt under sections 47F (personal information) and 47G (business information) of the FOI Act, and irrelevant material deleted under section 22 of the FOI Act.

A copy of the document that can be released to you is attached.

In making my decision, I have considered the following:

- the terms of your FOI request;
- the requested document;
- the FOI Act; and
- the ‘Guidelines issued 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 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:

- 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;

¹ FOI Guidelines, [6.142].

- 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; 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 parts of the requested document contains the personal information of an identified individual. 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 individual;
- the release of the personal information in the document would cause stress to the individual;
- 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 document; and
- the personal information may not be available from publicly accessible sources.

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

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

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:

² FOI Guidelines, [6.143].

³ FOI Guidelines, [6.144].

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 parts of the requested document contain the names of organisations which were contacted by the Department for the purposes of the Humanitarian Overseas Service Medal but were ultimately not declared as eligible organisations.

I am satisfied that the disclosure of those parts of the requested document would, or could reasonably be expected to, adversely affect those organisations in respect of their lawful business, commercial or financial affairs.

I am therefore satisfied that those parts of the requested document 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.

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, namely:⁵

⁴ FOI Guidelines, [6.192] – [6.193] (footnotes omitted).

⁵ 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.

I am satisfied that disclosure of the conditionally exempt information may promote the objects of the FOI Act.

Factors against disclosure

As the FOI Act does not provide any public interest factors against disclosure for decision makers to consider, I have instead had regard to the list of public interest factors against disclosure in the FOI Guidelines.⁶

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

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

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 in the objects of the FOI Act is given specific effect in the public interest test, as the test is weighted towards disclosure.⁷

However, in weighing the factors for and against disclosure, I attach more weight to the public interest factors against disclosure and consider that the public interest factors against disclosure outweigh the public interest factors in favour of disclosure.

I am therefore satisfied that disclosing the conditionally exempt information in the requested document 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.

The requested document contains irrelevant material. The irrelevant material is any material subject to the Department's redaction policy advised to you on 8 June 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.

⁶ FOI Guidelines, [6.22].

⁷ FOI Guidelines, [6.8].

In accordance with section 22 of the FOI Act, I consider that it is reasonably practicable to provide you with a copy of the requested document with the exempt or irrelevant information deleted and that you would not decline access to an edited copy of the document.

Publication of the document

Under section 11C of the FOI Act the Department will make arrangements to publish the document 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



David Belgrove
Acting Assistant Secretary
Parliamentary and Government Branch

28 June 2021