



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2021/098

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Alan Cole

DECISION BY: Ms Alison Green
Assistant Secretary
Protocol and International Visits Branch

By email: foi+request-7521-1239aca2@righttoknow.org.au

Dear Mr Cole

I refer to your email of 18 June 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:

Regarding the prime minister's visit to Singapore, Cornwall & London in the UK and Paris, France in June 2021

- 1. List of the delegation members travelling with the prime minister from the department of the prime minister and the prime minister's office. and if they just went to Singapore, Cornwall, London or Paris and the dates they travelled. if you plan to withhold names just their titles/position.*
- 2. Documents listing the name of the hotel the delegation stayed in and number of rooms reserved in Singapore, Cornwall, London and Paris*
- 3. schedule of the prime minister for the whole trip.*

On 16 July 2021, you agreed to the Department's request for a 14-day extension of time to process your request under section 15AA 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.

Relevant documents

The Department has undertaken a reasonable search of its records and, in accordance with section 17 of the FOI Act, created two (2) documents that meet the terms of your request (the **requested documents**):

- Document 1 addresses parts 1 and 2 of your request; and
- Document 2 addresses part 3 of your request.

Decision

I have decided to grant access in part to:

- Document 1, on the basis that it contains material that is exempt under section 33(a)(i) (national security) of the FOI Act; and
- Document 2, on the basis that it contains material that is exempt under sections 33(a)(i) and 33(a)(iii) (international relations) of the FOI Act, and conditionally exempt under section 47G(1) (business, commercial or professional affairs) of the FOI Act, and its disclosure would be contrary to the public interest.

Reasons

Section 17 of the FOI Act – requests involving use of computers etc.

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 documents you requested did not exist in a discrete form at the time of your request. However, following reasonable searches of the Department's records and using means ordinarily available to the Department for retrieving and collating information about the subject-matter of your request, the Department has produced two (2) documents containing the information you requested.

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

Section 33(a)(i) of the FOI Act – documents affecting national security

Section 33(a)(i) of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:*
 - (i) the security of the Commonwealth;*

Paragraphs 5.29, 5.31 and 5.33 of the FOI Guidelines state that:

The term ‘security of the Commonwealth’ broadly refers to:

- (a) the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests*
- (b) the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth’s international relations.*

...

The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

...

The Information Commissioner believes that it might be safer for the FOI decision maker to err on the side of non-disclosure provided the interests of other citizens are able to be protected. Where there is doubt, this should be in favour of non-disclosure.

The requested documents contain details which are not available in the public domain regarding the accommodation of the delegation members travelling with the Prime Minister, and specific meetings of the Prime Minister relating to national security issues.

I am satisfied that the disclosure of such material in the requested documents would, or could be reasonably expected to, cause damage to Australia’s security if it were disclosed. Accordingly, I have formed the view that material contained within the requested documents is exempt under section 33(a)(i) of the FOI Act.

Section 33(a)(iii) of the FOI Act – documents affecting international relations

Section 33(a)(iii) of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:*
 - ...
 - (iii) the international relations of the Commonwealth; or*

Paragraph 5.28 of the FOI Guidelines states that:

'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.

Paragraphs 5.36 to 5.37 of the FOI Guidelines also state that:

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them...

The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

Document 2 contains information pertaining to a meeting with a specific international organisation.

I am satisfied that the material contained within Document 2 is exempt under section 33(a)(iii) of the FOI Act, on the basis that disclosure of the material in question would, or could reasonably be expected to, cause damage to Australia's international relations.

Section 47G(1) of the FOI Act - business information

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

- (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 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.*

In relation to section 47G(1)(b), paragraphs 6.197 to 6.199 and 6.201 of the FOI Guidelines relevantly state as follows:

A document that discloses the kind of information described in [6.180] above will be conditionally exempt if the disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth 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 (s 47G(1)(b)).

This limb of the conditional exemption comprises two parts:

- *a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government*
- *the reduction will prejudice the operations of the agency.*

There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be sufficient to prejudice the future supply of information. Disclosure of the person's identity may also be conditionally exempt under s 47F (personal privacy). In these cases, consideration should be given to whether the information may be disclosed without also disclosing the identity of the person supplying the information.

...

The agency will usually be best placed to identify, and be concerned about the circumstances where the disclosure of documents might reasonably be expected to prejudice the future supply of information to it.

Document 2 contains information concerning the business, commercial or financial affairs of a certain organisation. I consider that the release of such information:

- would, or could reasonably be expected to, adversely affect the organisation in respect of its lawful business or professional affairs; and
- would prejudice the future supply of information to the Australian Government.

Consequently, I am satisfied that such information contained in Document 2 is 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 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.

Factor in favour of disclosure

The particular factor in favour of disclosure in this case is that disclosure would promote the objects of the FOI Act.

Factors against disclosure

The FOI Act does not provide for any public interest factors weighing against disclosure that decision makers may consider. However, in determining whether disclosure would be contrary to the public interest, I have had regard to the FOI Guidelines. The FOI Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the case, may be against disclosure.

I consider that the factors against disclosure in this case are that disclosure:

- may adversely affect the legitimate business/commercial activities of an organisation; and
- could reasonably be expected to prejudice the Australian Government's ability to obtain similar information from international organisations in the future.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the conditionally exempt information in the requested documents would be contrary to the public interest.

Processing and access charges

I have decided not to impose processing charges in respect of your FOI request.

Review rights

Information about rights of review 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 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



Alison Green
Assistant Secretary
Protocol and International Visits Branch

30 July 2021