



**Australian Government**  
**Office of Parliamentary Counsel**

Trav S

[foi+request-7677-f7a6fc28@righttoknow.org.au](mailto:foi+request-7677-f7a6fc28@righttoknow.org.au)

Dear Trav S

**Freedom of information request No. 1-2122**

1 As requested, this communication addresses you as “Trav S”. I refer to your request for an internal review of OPC’s decision to refuse access under the *Freedom of Information Act 1982* (the **FOI Act**) to documents relating to the Humanitarian Overseas Service Medal (Iraq) Declaration.

2 I have conducted an internal review of the decision and have decided to refuse access to the documents in full. My reasons are set out below, along with the background and some further information about your rights.

***Background***

3 In communications made on 12 and 20 August 2021, you sought access to:

- Part 1: a document listing each of the 29 documents related to file 12/5946—HOSM Amendment Regulation: Iraq clasp, recording the date each document was produced, the government agency/department producing each document, and each document’s subject as stated on the document; and
- Part 2: a copy of each email with the following Email Header metadata unredacted—the sender, receiver, subject and timestamp.

4 On 31 August 2021, OPC’s General Manager Corporate refused your request.

5 On 8 September 2021, you requested an internal review of that decision by email to [FOI@opc.gov.au](mailto:FOI@opc.gov.au).

6 I was asked to conduct the internal review, and am authorised under subsection 23(1) of the FOI Act to make decisions on behalf of OPC in relation to matters arising under the FOI Act. Under subsection 54C(3) of the FOI Act, I am required to make a fresh decision on behalf of OPC, within 30 days after the day your application for internal review was received.

***Internal review decision and reasons for decision***

7 In relation to Part 1 of your request, OPC has not identified any such document.

8 In relation to Part 2 of your request, I have considered the documents identified by OPC as falling within the scope of your request and have decided to refuse access to the documents, in full, on the grounds that they are exempt under section 42 of the FOI Act because:

- they are subject to legal professional privilege; and
- the Department of the Prime Minister and Cabinet (*PMC*), as the agency entitled to claim the privilege, does not waive its claim in relation to the documents.

9 I consider that the documents are subject to legal professional privilege because they comprise communications for the dominant purpose of the following:

- provision of drafting instructions to the Office of Legislative Drafting and Publishing (whose functions have since been transferred to OPC);
- provision of draft legislation and legal advice by the Office of Legislative Drafting and Publishing to PMC.

10 In your request for internal review, you expressed the view that legal professional privilege has been waived by wide distribution of the documents. However, the examples you gave do not appear to be examples of distribution of the particular documents and do not support an argument that legal professional privilege has been waived.

11 I have considered whether it is possible and reasonably practicable for OPC to prepare an edited copy of the documents in accordance with section 22 of the FOI Act. I have concluded that it is not, on the basis that the nature and extent of the modifications required to ensure that the documents are no longer exempt would require total or near total redaction of all of their contents.

### ***Material taken into account in making decision***

12 I have taken the following material into account in making this decision:

- (a) the correspondence between you and OPC mentioned above;
- (b) the content of the documents identified as falling within the scope of your request;
- (c) correspondence between OPC and PMC in which PMC confirms that it does not waive its claim to legal professional privilege in relation to the documents;
- (d) the FOI Act;
- (e) guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

### ***Your review rights***

13 If you are not satisfied with this decision, you may apply to the Australian Information Commissioner for review of the decision. Your application should include a

copy of this decision and your reasons for disagreeing with it, and must be made in writing within 60 days of the date of this letter and lodged in one of the following ways:

- online:  
[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)
- email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
- post: GPO Box 5218 Sydney NSW 2001

14 More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

### ***FOI complaints***

15 If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

- online:  
[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)
- email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
- post: GPO Box 5218 Sydney 2001

16 More information about complaints is available on the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

17 If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the Office of the Australian Information Commissioner has more information at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

### ***Questions about this decision***

18 If you have any questions about this decision, please contact OPC's FOI Coordinator:

- by email: [foi@opc.gov.au](mailto:foi@opc.gov.au)  
by post: FOI Coordinator  
Office of Parliamentary Counsel  
Locked Bag 30  
Kingston ACT 2604

Yours sincerely

Rebecca Considine  
First Assistant Parliamentary Counsel  
7 October 2021