

22 November 2021

By email: foi+request-7891-af9b6eb4@righttoknow.org.au

Dear Ms Sorensen,

Request for access to documents under the *Freedom of Information Act 1982*

The purpose of this letter is to give you a decision about access to documents you requested under the *Freedom of Information Act 1982* (Cth) (FOI Act) from the eSafety Commissioner (eSafety) on 24 September 2021.

Summary

I, Maria Vassiliadis, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to requests under the Act.

The scope of your request is as follows:

‘Any emails and correspondence from the eSafety Commissioner or final documents that contain the following phrases:

“NCOSE”, “Morality in Media”, “Ending Sexploitation Podcast”, “The National Center on Sexual Exploitation””.

The period of your request is from 1 July 2021 to 24 September 2021.

Your request does not include news articles or publicly available information.

Scope of your request

I have identified 6 documents as falling within the scope of your request.

eSafety took all reasonable steps to obtain these documents, including searching our records systems and contacting relevant individuals and asking them to provide any documents relating to the matter outlined in your request.

Timeframe for processing

eSafety received your request on 24 September 2021 and the 30-day statutory period for processing your request commenced from the day after that date. The 30-day statutory period for processing your request concluded on 24 October 2021, but as this was a Sunday, it became the next business day, Monday 25 October 2021.

However, we wrote to you on 21 October 2021 to advise you that we were undertaking third party consultation and that the statutory time period for processing your request has been extended by an additional 30 days, in accordance with subsection 15(6) of the FOI Act.

The time period therefore concludes on 24 November 2021.

We are providing you a response within the statutory timeframe.

Material taken into account

I have taken the following material into account in making my decision on access:

- the FOI Act, specifically sections 11, 11A, 11B, 22, 45, 47C, 47E and 47F
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines), and
- the content of the documents that fall within the scope of your request.

Decision and Reasons for Decision

I have identified 6 documents as falling within the scope of your request.

Of the documents, I have decided to:

- Release in full document 1
- Release in part documents 2, 3, 4 and 5
- Wholly exempt document 6.

Pursuant to section 22 of the FOI Act, I have redacted information that is irrelevant to the scope of your request. We have also redacted information we assume you do not require, including the names of public servants.

The attached schedule of documents provides a description of each document and my decision on access for each one. The reasons for my decisions are outlined below.

Full access

I have released in full document 1.

Partial access

I have released in part documents 2, 3, 4 and 5, in accordance with the exemptions outlined below.

Public interest conditional exemptions

Section 47C of the FOI Act – Deliberative processes

Section 47C(1) provides that a document is conditionally exempt if its release would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- a. an agency
- b. a Minister, or
- c. the Government of the Commonwealth.

Some of the information contained in document 2 contains information of deliberative matter, including deliberative processes, relating to the eSafety's regulatory functions and powers.

Public interest

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest.

In considering whether to exempt document 2, I have considered and weighed factors for and against disclosure, as outlined in the Guidelines and section 11B of the FOI Act. I have considered that disclosure is generally considered to promote the objects of the FOI Act, can enhance the scrutiny of government decision making and can inform debate on matters of public importance. I have also considered that disclosure of the information may impede the ability for eSafety to deliberate and weigh up various options associated with regulatory measures that are conferred on it by the *Enhancing Online Safety Act 2015* (Cth). This may affect the ability of eSafety to operate as effectively and efficiently as possible.

Having weighed these factors and determined that full release would be contrary to the public interest, I consider relevant material in document 2 is partially exempt from release under section 47C and have therefore granted you partial access to document 2.

Section 47F of the FOI Act – Personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information of any person.

Personal information

‘Personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

Some of the documents relevant to your request contain the personal information of third parties, including names, contact details and employment details.

Unreasonable disclosure

The FOI Act states that, when deciding whether the disclosure of personal information would be ‘unreasonable’, I must have regard to four factors set out in section 47F(2) of the FOI Act:

1. The extent to which the information is well known
2. 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
3. The availability of the information from publicly available resources, and
4. Any other matters that I consider relevant.

I have therefore considered each of the above four factors.

Overall, the documents contain a variety of personal information.

Some of the personal information is not well known, would only be known to a limited group of people and is not available from publicly available resources. I have also considered other relevant matters that are specific to the personal information contained in the documents.

Public interest

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest.

In considering whether to exempt the documents, I have considered and weighed factors for and against disclosure, as outlined in the Guidelines and section 11B of the FOI Act.

I have considered that disclosure is generally considered to promote the objects of the FOI Act and can enhance the scrutiny of government decision making. However, I have also considered factors that weigh against disclosure, including that disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy and to harm the interests of an individual or groups of individuals.

In addition, I do not consider that release of personal information in these circumstances is material to the scope of your request or would materially enhance your understanding of the documents you've requested.

Having weighed these factors and determined that full release would be contrary to the public interest, I consider relevant material in documents 3 and 5 is partially exempt from release under section 47F and have therefore granted you partial access to documents 3 and 5.

Section 47E(c) of the FOI Act – Certain operations of agencies – substantial adverse effect on the management or assessment of personnel

Section 47E(c) of the FOI Act provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

Some of the information contained in document 4 relates to particular personnel of eSafety. I have determined that given circumstances that are specific to eSafety and to those personnel, the disclosure of this information could reasonably be expected to substantially adversely impact eSafety's management of those personnel, as well as other personnel, due to its obligations as a Commonwealth agency.

Public interest

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest.

In considering whether to exempt the documents, I have considered and weighed factors for and against disclosure, as outlined in the Guidelines and section 11B of the FOI Act.

I have considered that disclosure is generally considered to promote the objects of the FOI Act and can enhance the scrutiny of government decision making. However, I have also considered factors that weigh against disclosure, including that disclosure could reasonably be expected to prejudice the management functions of eSafety and harm the interests of an individual or groups of individuals.

In addition, I do not consider that release of personal information in these circumstances is material to the scope of your request or would materially enhance your understanding of the documents you've requested.

Having weighed these factors and determined that full release would be contrary to the public interest, I consider relevant material in document 4 is partially exempt from release under section 47E(c) and have therefore granted you partial access to document 4.

Section 47E(d) of the FOI Act – Certain operations of agencies – substantial adverse effect on the proper and efficient conduct of the operations of an agency

Section 47E(d) provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Some of the information contained in document 4 is material that, if disclosed, would result in the disclosure of information relating to the operation, or proposed operation, of eSafety's regulatory functions. Disclosing this information is likely to have a substantial adverse effect on eSafety's operations and make it more difficult for eSafety to fulfil its legislative charter and undertake its important work of protecting the community.

Public interest

Under section 11A of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest.

In considering whether to exempt the documents, I have considered and weighed factors for and against disclosure, as outlined in the Guidelines and section 11B of the FOI Act. I have considered that disclosure is generally considered to promote the objects of the FOI Act, can enhance the scrutiny of government decision making and can inform debate on matters of public importance. However, I have also considered that disclosure of the information would be contrary to the public interest in eSafety operating effectively and continuing to protect Australians from harm online.

Having weighed these factors and determined that full release would be contrary to the public interest, I consider relevant material in document 4 is partially exempt from release under section 47E(d) and have therefore granted you partial access to document 4.

Refused access

Exemption – Section 45 of the FOI Act – Documents containing material obtained in confidence

Section 45(1) provides that a document is an exempt document if its disclosure under the FOI Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

Section 45(1) applies to information that was communicated in circumstances giving rise to an obligation of confidence, which was mutually understood and accepted by both parties. I have considered that release of certain information contained in document 6 would threaten to breach this confidence, contrary to the objectives of the FOI Act.

In these circumstances, I consider relevant material in document 6 is wholly exempt from release.

Final assessment of charges

I have decided that you are not liable to pay a charge in respect of your request.

Your rights of review

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54B of the FOI Act, an application for internal review must be made within 30 days of the date that you receive this decision. You can request an internal review of this decision by sending an email to FOI@esafety.gov.au.

You may also request that the Australian Information Commissioner review this decision under section 54L of the FOI Act. An application for review by the Australian Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: FOI @oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you have any questions, please contact me on 1800 880 176 or at FOI@esafety.gov.au.

Yours sincerely,

Maria Vassiliadis
Office of the eSafety Commissioner
Authorised decision maker pursuant to section 23(1) of the FOI Act

SCHEDULE OF DOCUMENTS

Number	Date	Size	Description	Decision on access	Grounds for the deletion of exempt material
1	22 September 2021	3 pages	Emails between eSafety staff	Release in full	Section 22
2	23 September 2021	28 pages	Emails between eSafety staff	Release in part	Section 47C Section 22
3	22 June – 16 July 2021	17 pages	Emails between NCOSE and eSafety	Release in part	Section 47F Section 22
4	22 June – 16 July 2021	5 Pages	Emails between eSafety staff	Release in part	Section 47E(c) Section 47E(d) Section 22
5	22 September 2021	1 page	Emails between NCOSE and eSafety	Release in Part	Section 47F Section 22
6	September 2021	10 pages	Submission by organisation on eSafety's age verification for online pornography roadmap.	Wholly exempt	Section 45 Section 22