

29 October 2021

foi+request-7908-eb49ab4a@righttoknow.org.au

Dear Greg,

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 29 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:

- 'Correspondence, including emails, whether internal to the office or between the office and outside parties;
- diary entries, calendar entries, and notifications of online meetings;
- minutes of meetings; and
- discussion of policy, and any draft or final policy papers or proposals;

where those documents discuss or relate (in whole or in part) to:

- the proposed involvement of Mastercard, or any individual or entity closely related to Mastercard, in delivering or influencing the delivery of online age verification services in Australia;

covering the period:

- 1 February 2020 to 7 October 2021.'

Thank you for working with eSafety to confirm the following:

1. Your request relating to any individual or entity closely related to Mastercard refers to 'employees and representatives of Mastercard, or employees or representatives of companies or organisations that are, to the Commissioner's knowledge, subsidiaries or subcontractors of Mastercard.'
2. eSafety will interpret point 1 as referring only to the names of people eSafety is aware (to the best of our knowledge) represent Mastercard or names that appear on a document in eSafety's possession related to, or which references, Mastercard, where those names relate to Mastercard. eSafety will then conduct a further search of its documents in relation to those names.
3. Your request does not refer to publicly available information or news articles.

Scope of your request

I have identified 5 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 29 February 2021 and the 30-day statutory period for processing your request commenced from the day after that date. The time period therefore concludes on 29 October 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, 47 and 47E
- 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 decided that of the 5 documents identified as relevant to your request:

- 3 are released in full, with redactions on the grounds of relevance, and
- 2 are wholly exempt from release.

Pursuant to section 22 of the FOI Act, I have redacted information that is irrelevant to the scope of your request. Given the broad nature of your request, several documents are heavily redacted because the majority of the content is not within 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 about access for each one. The reasons for my decisions are outlined below.

Released in full

I have granted you access in full to documents 3, 4 and 5.

As outlined above, the redactions in these documents are because the redacted content is either irrelevant to, or does not fall within the scope of, your request.

Refused access

I have refused you access to documents 1 and 2, in accordance with the exemptions outlined below.

Exemption – Section 47 – Documents disclosing trade secrets or commercially valuable information

Section 47 provides that a document is exempt if its disclosure would disclose trade secrets or any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Documents 1 and 2 relate to information of a commercial value to the Digital Transformation Agency (DTA). I consider that this information is not publicly known and that this confidential commercial information may lose some of its commercial and competitive value if it becomes more widely known.

I also consider that disclosing the information may reduce the value of a business operation or commercial activity being discussed.

I have therefore determined that documents 1 and 2 are wholly exempt from release pursuant to section 47.

I note that the DTA supports the view that the information contained in these 2 documents is commercially valuable information and should be exempt from release.

While I am satisfied documents 1 and 2 are exempt under section 47, I note that I also consider they would be exempt under section 47E, as outlined below.

Public interest conditional exemption – Section 47E of the FOI Act – Certain operations of agencies

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.

Documents 1 and 2 contains material that, if disclosed, would result in the disclosure of information relating to the operation of the DTA's functions.

Overall, I consider it would make it more difficult for the DTA to fulfil its legislative role of providing strategic and policy leadership on Whole-of-Government and shared information and communications technology investments and digital service delivery. Given the DTA's functions rely on competitive and commercial activities, disclosure of this information would have a substantially adverse effect on the proper and efficient conduct of the DTA.

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 FOI 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, including that it could reasonably be expected to prejudice the competitive commercial activities of an agency and could reasonably be expected to prejudice an agency's ability to obtain similar information in the future. The public interest weighs in favour of not

disclosing this information, particularly given the need for the DTA to be able continue to engage in competitive commercial activities.

I note that the DTA also supports the view that the information contained in these 2 documents is information relating to the operation of the DTA's functions and should be exempt from release.

Having weighed these factors and determined that release at this time would be contrary to the public interest, I consider that documents 1 and 2 are wholly exempt from release under section 47E of the FOI Act.

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 54 of the FOI Act, you may apply in writing to enquiries@esafety.gov.au for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the 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: enquiries@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 in this regard, 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	Exemptions of deletions on the grounds of relevance
1	3 August 2021	2 pages	Speaking notes for DTA presentation on age verification and digital identity	Access refused	Section 47 and 47E
2	3 August 2021	23 pages	Slides for DTA's presentation on age verification and digital identity	Access refused	Sections 47 and 47E
3	9 August 2021	2 pages	eSafety meeting note from meeting with DTA	Release	Section 22
4	14 September 2021	1 page	eSafety meeting note from meeting with DTA	Release	Section 22
5	27 September 2021	1 Page	Email between eSafety staff on news article relating to DTA and Mastercard	Release	Section 22