



**Our ref. 228/2020**

Email: Concerned Citizen [foi+request-7946-d67fa361@righttoknow.org.au](mailto:foi+request-7946-d67fa361@righttoknow.org.au)

Dear Concerned Citizen

1. I refer to your request for an internal review of the decision made 6 December 2021 to your application requesting access to:  
*'any reports or documents prepared by Boston Consulting Group (BCG) about the Google/Apple Exposure Notification system (GAEN, EN, or ENF) including reports comparing the effectiveness of Exposure Notification to the Bluetooth used in the COVIDSafe app.'*
2. In accordance with s 54C of the Freedom of Information Act 1982 (FOI Act), I am authorised to conduct an internal review of a decision regarding access under the FOI Act. As the decision-maker for this internal review, I am in no way bound by the primary decision.

#### ***Decision***

3. I affirm the primary decision made by Anthony Warnock on 6 December 2021 on the basis that this document was created for the purpose of informing the Minister and if disclosed, in full, would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

#### ***Reasons for my decision***

4. Section 22(1)(b)(ii) of the FOI Act provides as follows:  
*(ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request*

...

5. As stated in the initial decision, parts of the documents contain information that is outside the scope of your request. For example, the documents contain several email chains where parts of the emails are not related to the scope of your request. It is these components where section 22 has been applied to the document.

6. Section 47G of the FOI Act provides as follows:

(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.

7. The FOI Guidelines relevantly provide as follows:

6.197 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)).

6.198 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

8. In relation to the test 'would or could reasonably be expected to', the FOI Guidelines provide as follows:

The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

9. The FOI Guidelines provide that the term 'substantial adverse effect' broadly means

... 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'. The word 'substantial', taken in the context of

*substantial loss or damage, has been interpreted as ‘loss or damage that is, in the circumstances, real or of substance and not insubstantial or nominal’.*

10. As stated in the initial decision, the information which has been removed from the documents under this section contains confidential information. Revealing this information would adversely affect the ability of DTA to enter into commercial arrangements as it would reveal opinions and other information which would be of advantage to potential vendors and put the Commonwealth and competitors at a disadvantage.
11. For these reasons I uphold the original decision.

***Material taken into account***

- The primary decision
- Searches conducted
- Your contentions dated 6 December 2021
- Advice provided by the subject matter experts
- The Commonwealth *Freedom of Information Act 1982*
- Guidelines issued by the Office of the Australian Information Commissioner.

***Review by the Australian Information Commissioner***

12. Under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner. Your application must be made within 30 days of you receiving this notice.
13. The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).
14. You can contact the Information Commissioner to request a review of a decision online ([www.oaic.gov.au](http://www.oaic.gov.au)), by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or by writing to the Information Commission at:

Director of FOI Dispute Resolution

GPO Box 5218

SYDNEY NSW 2001

***Complaints to the Australian Information Commissioner***

15. You may complain to the Australian Information Commissioner about action taken in relation to your request.
16. Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

17. There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify DTA as the relevant agency.

***Contacts***

18. If you have any queries regarding this notice, please contact the FOI team by email to [foi@dta.gov.au](mailto:foi@dta.gov.au).

Yours sincerely,

Ben Smith  
Acting Head of Corporate  
Digital Transformation Agency (DTA)