



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2021/266IR

INTERNAL REVIEW DECISION AND REASONS UNDER SECTION 54 OF *THE FREEDOM OF INFORMATION ACT 1982*

REQUEST BY: Trav S

DECISION BY: Mr John Reid PSM
First Assistant Secretary
Government Division

By email: foi+request-7986-80289aaf@righttoknow.org.au

Dear Trav S

I refer to your correspondence of 26 November 2021 in which you requested internal review of the decision (the **primary decision**) dated 25 November 2021 by Ms Petra Gartmann, Assistant Secretary, Legal Policy Branch, Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**).

Under section 54(2) of the FOI Act, an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

Authorised decision maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the primary decision) to review the decision. I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Internal review decision

I have decided to affirm the primary decision to grant access to parts of the documents relevant to your FOI request but refuse access to the remainder on the grounds that they contain material that is conditionally exempt under sections 47C, 47E(d) and 47F of the FOI Act.

In reaching my decision I have had regard to:

- your FOI request of 19 October 2021;
- the primary decision;
- your request for internal review;

- the FOI Act; and
- the ‘Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*’ (the **FOI Guidelines**).

Background

The FOI request

On 19 October 2021, you made a request under the FOI Act to the Department in the following terms:

On 28 July 2021, your department served notice of intent to consider a vexatious declaration application on a member of the public engaged in scrutinising your department’s administrative decision-making regarding the Humanitarian Overseas Service Medal.

On 1 August 2021, the member of the public replied refuting your department’s allegations and implications. The reply informed your department of significant errors in their administrative processes associated with the HOSM that were revealed through FOI. The response respectfully asked your department to take a number of actions.

Please provide a copy of:

- 1. the 28 July 2021 and 1 August 2021 letters*
- 2. all departmental correspondence between 1 August and 19 October 2021 related to this matter*
- 3. draft and final documents created by the department in response to the 1 August 2021 letter.*

The primary decision

On 25 November 2021, the Department notified you of the primary decision on your FOI request.

The decision-maker identified 11 documents relevant to your FOI request.

The decision-maker decided to grant access in part to the documents, refusing access to some parts of the requested documents on the grounds that they contain material that is exempt under the following provisions:

- Section 47C of the FOI Act (deliberative material);
- Section 47E(d) of the FOI Act (proper and efficient operations of an agency); and
- Section 47F of the FOI Act (personal information).

The internal review request

On 26 November 2021, you requested an internal review of the primary decision in the following terms:

We have no confidence in your department’s willingness to provide truthful unbiased advice to government on this matter. However you will understand we are required to request an internal review before we can request an external review. Therefore please accept our

internal review request. We will be grateful if you will take the following information into consideration.

- 1. We contend the public interest factors favour disclosing all conditionally exempt material, except the names and addresses of members of the public.*
- 2. The integrity of the HOSM and its associated processes is in doubt as a result of your department's actions and omissions. We have inquired into less than 10% of the HOSM eligible operations and FOI documents reveal alarming errors in assessments and advice to government.*
- 3. We note your department's unwillingness to accept reasonable public scrutiny and requests for external review of decisions that are clearly affected by an apparent bias. This is at odds with good governance and the values your department purports to uphold.*
- 4. Your department obstructs reasonable FOI requests from affected members of the public seeking to reasonably and respectfully scrutinise your department's decision making.*
- 5. In 2004 your department failed to consult with relevant stakeholders they ought to have consulted with before the HOSM declaration for Iraq was drafted and promulgated. Despite this, your department advises government they consult all relevant stakeholders.*
- 6. In 2009 your department failed to inform government that the GE contingent included commercial security contractors. They were rightly awarded the HOSM. The assistant secretary was informed of this but it is unclear if he informed his superiors in accordance with his duty to do so.*
- 7. In 2012 your department provided a written agreement to AusAID that your department may have dishonoured. The assistant secretary may have taken it upon themselves to make a ministerial policy decision that was the Minister's to make.*
- 8. In 2013 the assistant secretary provided unsubstantiated and manifestly unreasonable information to government. They also withheld written agreements and materially relevant documents that should have been included in their brief.*
- 9. At least 3 senior executive service public servants in your department has been informed of substantial matters that appear to warrant investigation but nothing has happened.*
- 10. Your department conflates legislative instruments and makes statements that are not supported by facts.*
- 11. In matters related to this case, your department operates more like a cabal than a transparent government department.*

As noted, we have no confidence in your department's willingness to provide truthful unbiased advice to government on this matter. Regrettably the integrity of the HOSM and its associated processes is doubt.

Reasons

I have considered your submissions in support of your request for internal review, however I am satisfied that the primary decision remains the correct and preferable decision, and I agree with the primary decision-maker's findings and the reasons underpinning those findings.

Having reviewed the material which the primary decision-maker found to be conditionally exempt under sections 47C, 47E(d) and 47F of the FOI Act, I agree with the primary

decision-maker's findings that it would not be in the public interest to release those documents.

I have therefore decided to affirm the primary decision to refuse access, in part, to the documents relevant to your FOI request on the grounds that it contains material that is conditionally exempt under sections 47C, 47E(d) and 47F of the FOI Act and disclosure would, on balance, be contrary to the public interest.

Review rights

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this decision. 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

A handwritten signature in blue ink that reads "J Reid".

John Reid PSM
First Assistant Secretary
Government Division

13 December 2021