



Our ref: 235/2021

Email: Richard Smith foi+request-8110-f7fff835@righttoknow.org.au

Freedom of Information Request Decision

Dear Richard Smith

The Digital Transformation Agency (DTA) refers to your Freedom of Information request (FOI request) received on 18 November 2021 in which you sought access to documents under the provisions of the Freedom of Information Act 1982 (FOI Act).

The document you requested:

a) Documents related to proposed involvement of Mastercard, or any entity working on the behalf of Mastercard, in delivering or influencing the delivery of an online age verification system in Australia covering the period beginning 1 February 2020 to 17 November 2021. Included in the scope of my request would be correspondence, including emails, whether internal to the office or between the office and outside parties, diary entries, calendar entries, notifications of meetings and minutes of meetings; and

b) Documents related to discussion of development of policy for an online age verification system in Australia, and any draft or final policy papers or proposals with the involvement of Mastercard, or any entity working on the behalf of Mastercard.

The DTA have identified 16 documents in relation to the scope of your FOI request. I have examined these and have decided to release two documents in full, exempt three documents in full under section 34 and the remaining 11 documents to be released in part under sections 22, 47E, 47F and 47G of the FOI Act as:

- The documents contain information which are subject to Cabinet Confidence
- The documents contain information that, if released, would cause harm to the operations of the DTA
- The documents contain information relating to personal privacy
- The documents contain sensitive information about the commercial or business affairs of a third party

Section 26 of the FOI Act requires the DTA to provide a statement of reasons in support of a decision. In depth reasons for this decision is set out in **Attachment A**.

The FOI Act also provides a number of avenues for review set out in **Attachment B** if you are dissatisfied with any aspect of this decision.

If you have any questions or require further information, please contact the FOI Officer on 02 6120 8595 or via email at foi@dtg.gov.au.

Yours sincerely

Juleigh Cook
Authorised Decision Maker
Digital Transformation Agency (DTA)

ATTACHMENT A - STATEMENT OF REASONS

Decision

I, Juleigh Cook, am an officer authorised to make decisions under subsection 23(1) of the Freedom of Information Act 1982 (FOI Act)

I have examined the document subject to this request and have decided to exempt it from release.

Reasons for decision

Section 22 - Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) *This section applies if:*
- (a) *an agency or Minister decides:*
 - (i) *to refuse to give access to an exempt document; or*
 - (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
 - (b) *it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:*
 - (i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*
 - (ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*
 - (c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*
 - (i) *the nature and extent of the modification; and*
 - (ii) *the resources available to modify the document; and*
 - (d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

Subsection 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (subsection 22(3) of the FOI Act).

Exempt material is deleted pursuant to subparagraph 22(1)(a)(i) and irrelevant material is deleted pursuant to subparagraph 22(1)(a)(ii) of the FOI Act.

I have decided that parts of the documents would disclose information that could reasonably be regarded as irrelevant to your request because it contains information that is outside the scope of your request.

Section 34 - Cabinet documents

General rules

- (1) A document is an exempt document if:
 - (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
 - (b) it is an official record of the Cabinet; or
 - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
 - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.
 Note: However, the attachment itself may be an exempt document.
- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
 - (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed

I have decided to refuse access to three documents, on the basis that as these documents were submitted to Cabinet for consideration and was only brought into existence for the purpose of submission for considerations by Cabinet.

Section 47E – Public interest conditional exemptions – certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*

(c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*

(d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

In assessing if section 47E(a) and 47E(d) of the FOI Act applies, I have considered:

- whether the information contained in the documents would prejudice the effectiveness of a procedure or method for the conduct of a test or examination;
- whether the information if released would have substantial adverse effect on the proper and efficient conduct of the operations of an agency; and
- the extent to which the information is already a matter of public knowledge.

I have also taken the below factors against disclosing the information into consideration:

- the information contained in the documents would prejudice the effectiveness of a procedure or method for the conduct of a test or examination;
- the information contained in the documents, if released, would have substantial adverse effects on the proper and efficient conduct of the operations of an agency; and
- the information is not a matter of public knowledge.

The DTA needs to ensure that elements of the Australian Government Digital Identity system are protected from malicious actors who seek to obtain insight into its usage. Given the potential role for Digital Identity systems to play in Age Verification, it heightens the risk that technical operations could be compromised or sabotaged.

Given the detail relating to the Australian Government Digital Identity system and commercial digital identity systems that can be derived from the documents requested, the potential for misuse of that information, and that the information contained in the documents are not a matter of public knowledge, I have decided to exempt the relevant information under section 47E.

Section 47F - Public interest conditional exemptions – personal privacy

General rule

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) *the extent to which the information is well known;*
 - (b) *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;*
 - (c) *the availability of the information from publicly accessible sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*

Section 4 of the FOI Act provides that ‘personal information’ has the same meaning as in the Privacy Act 1988.

Section 6 of the Privacy Act provides that:

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

The Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act in paragraphs [6.116] – [6.117] explain:

6.116 Personal information means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (4 4(1)). In other words, personal information:

- identifies, or could identify, a person
- says something about a person
- may be opinion
- may form part of a database
- may be true or untrue
- relates to a natural person.

6.117 Personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

In assessing if section 47F of the FOI Act applies, I have considered:

- the definition of the personal information under section 4 of the FOI Act;
- the nature of the information, for example whether the disclosure would cause serious consequences;
- the object of the FOI Act, which encourages a right of access to documents held by government agencies, subject to certain exemptions; and
- the extent to which the information is already a matter of public knowledge and/or well known.

I have also taken the below factors against disclosing the information into consideration:

- release of the information could reasonably be expected to prejudice the protection of an individual’s right to privacy; and
- the information is not a matter of public knowledge and/or well known.

Having examined the documents, I am satisfied that some of the information is personal information as it identifies a person(s) and provides personal information about an individual(s).

After considering all the relevant factors, I consider that the importance of maintaining the individual’s right to privacy outweighs the factors in favor of disclosure.

Accordingly, I have decided that parts of the information contained within documents is conditionally exempt under section 47F of the FOI Act.

47G Public interest conditional exemptions – business

- (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.*

In assessing if section 47G of the FOI Act applies, I have considered:

- the nature of the information and whether the disclosure would cause no serious consequences;
- the object of the FOI Act, which encourages a right of access to documents held by government agencies, subject to certain exemptions; and
- the extent to which the information is already a matter of public knowledge and/or well known.

I have also taken the below factors against disclosing the information into consideration:

- the disclosure of information relating to the business, commercial or financial affairs of the third party could be considered as unreasonable disclosure; and
- the information is not a matter of public knowledge and/or well known.

In examining the document, I am satisfied that releasing the information within the document could involve the unreasonable disclosure of the financial or business affairs of a third party.

Accordingly, I have decided that the information within the document is conditionally exempt under section 47G of the FOI Act.

Public interest considerations

Public interest conditional exemption considerations

In relying on the public interest conditional exemptions under section 47E, 47F and 47G, I considered the public interest factors under section 11A – Access to documents on request.

Section 11A

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

(6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and*
- (b) an exempt document:

 - (i) under Division 2 of Part IV (exemptions); or*
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).**

Section 11B (3), (4) and (5) – Public interest exemptions – factors

(3) Factors favoring access to the document in the public interest include whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information.*

(4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;*
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;*
- (c) the author of the document was (or is) of high seniority in the agency to*

which the request for access to the document was made;
(d) access to the document could result in confusion or unnecessary debate.
Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

In consultation with the third party, they have requested that the DTA considers the confidential arrangements and in particular the terms of those arrangements.

Considering the submissions of the third party, I am satisfied that releasing the requested information would not be in the public interest.

ATTACHMENT B – REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you. Firstly, under section 54 of the FOI Act, you may apply to DTA for an internal review of the decision. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access

An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to: foi@dtg.gov.au

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

Review by the Australian Information Commissioner

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

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 www.oaic.gov.au.

You can contact the Information Commissioner to request a review of a decision online 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

You may complain to the Australian Information Commissioner about action taken in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:
Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

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 the DTA as the relevant agency.

Contacts

If you have any queries about this notice, please contact the FOI team by email foi@dtg.gov.au.