

Monday, 10 January 2022

Eliza Sorensen

By email: foi+request-8172-458abe43@righttoknow.org.au

Dear Eliza,

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 10 December 2021.

Summary

I, Gillian Tang, 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:

‘Information that shines light into the decision making process for making an announcement on Twitter through the official eSafety account at 9:00pm Australian Eastern Daylight Time on December 9th 2021 about the release of the thematic analysis of evidence into an age verification roadmap for Australia.’

Your request includes:

‘Emails, internal instant messaging services, SMS, memos, final documents, risk analysis, age verification road map marketing plan, internal marketing processes (including policies and/or guidelines around social engagement data in Australia, making official announcements, and what hours the eSafety social accounts are monitored), calendar invites and meeting notes.’

The period of your request is from 16 August 2021 to 10 December 2021.

As outlined in our acknowledgment letter, we have assumed that you do not require the names of public servants and have therefore redacted them on relevance grounds pursuant to section 22 of the FOI Act.

Scope of your request

eSafety has identified 2 documents as falling within the scope of your request.

We 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 initial request on 10 December 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 therefore concludes on 9 January 2022, but as this is a Sunday, it becomes the next business day, Monday 10 January 2022. 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 and 47C;
- 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

Of the 2 documents falling within the scope of your request, I have decided to:

- release to you document 1 in full; and
- release to you document 2 in part.

As outlined above, the names of public servants have been redacted pursuant to section 22 of the FOI Act.

The attached schedule provides a description of the documents and my decision about access for each document.

Conditional exemption

The exemption applied to part of document 2 is a conditional exemption. Below I explain why I consider the relevant conditional exemption applies.

Conditionally exempt matter must be released unless, in the circumstances, access to it at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act). The FOI Guidelines provide more information about the public interest test and I have had regard to it when making this decision.

Paragraph 6.27 of the FOI Guidelines explains that concluding that, on balance, disclosure of a document would be contrary to the public interest requires determining that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

For the conditional exemption applied to document 2, I explain below the factors favouring and against access I consider to be relevant. I have considered the mandatory factors in section 11B(3) and have not considered any of the irrelevant factors in section 11B(4) of the FOI Act.

Section 47C – Deliberative processes

Section 47C(1) of the FOI Act permits conditional exemption of a document if its disclosure would disclose deliberative matter. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency.

Document 2 includes information that would reveal deliberative processes of eSafety with respect to its social media strategy and activities.

I do not believe this information is operational or purely factual information (see section 47C(2)), and am satisfied that discrete parts of document 2 are conditionally exempt under s 47C.

Public interest factors

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 document, 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 of eSafety to deliberate, evolve thoughts and evaluate advice, and perform functions 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 release at this time would be contrary to the public interest, I consider that document 2 is exempt in part under section 47C.

Additional information

My decision above relates to documents that fall within the scope of your request. However, in the interests of transparency and promoting understanding of government processes more broadly, eSafety is providing you with additional information outside the scope of your request.

I hope this assists in understanding eSafety's general approach to scheduling social media posts.

eSafety schedules posts at various times of the day, including on weekends, depending on a number of factors, including the subject matter and target audience. We do this to ensure posts get the highest organic reach possible.

eSafety utilises software to schedule posts. This software includes a feature that determines 'optimal send times', which are the best times for posting content on a specific day based on engagement factors.

The Twitter post the subject of your request was published within the optimal send time identified by our software.

It was also within the timeframe that eSafety's metrics show eSafety's Twitter audience is most engaged on weekdays.

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,

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

Schedule 1 - Schedule of Documents

| Number | Date | Size | Description | Decision on access | Exemptions or deletions on the grounds of relevance |
|--------|-----------------|---------|--|--------------------|---|
| 1 | 9 December 2021 | 3 pages | Email between eSafety staff on decision to put out a tweet around thematic analysis of evidence from the first phase of public input into the age verification roadmap | Release in full | Section 22 |
| 2 | 9 December 2021 | 2 pages | Email between eSafety staff on decision to put out a tweet around the age verification roadmap | Release in part | Section 47C Section 22 |