

2 March 2022

Greg Tannahill
By email: foi+request-8379-07023778@righttoknow.org.au

Dear Greg,

Decision on 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 that you requested from the eSafety Commissioner (eSafety) under the *Freedom of Information Act 1982* (FOI Act).

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.

Background

On 31 January 2022, you requested access to:

'All policy documents, guidelines and procedures that purport to apply to the eSafety Commissioner, employees of her office, or contractors of her office, relating to:

- communication and media announcements
- official use of social media by the Commissioner, her office, or media/comms staff
- process for release of public documents and engaging in public consultation.

This should include both documents formulated within the eSafety Office, and documents created by other government agencies which the eSafety Office applied, circulated to staff, or considered itself bound by.'

Following receipt of your request, eSafety confirmed the scope of your request on 14 February 2022. In response to this correspondence, you advised you sought public documents as well.

On 24 February 2022, eSafety wrote to you advising that we were required to undertake third party consultation. Specifically, eSafety advised that we would be writing to relevant individuals in relation to the documents that contain their personal information and/or information concerning their business or professional affairs.

In response you advised that this information is not relevant and could be redacted under the request. The Office of the Australian Information Commissioner's FOI Guidelines, referencing s 27 and s 27A of the FOI Act, notes that "(a)n agency... may need to consult a third party where documents subject to a request affect Commonwealth-State relations (s 26A), are business documents (s 27) or are documents affecting another person's privacy (s 27A)." An agency must, if it is reasonably practicable, consult with a third party if they consider that the third party might "reasonably wish to make a contention" that a document is exempt or conditionally exempt. However, as you have agreed this information is not relevant eSafety will redact all information requiring third party consultation.

The time period for processing your request concludes on 2 March 2022.

We are providing you a response within the statutory timeframe.

Scope of your request

I understand the following in relation to the scope of your request.

The request is to encompass:

'All policy documents, guidelines and procedures that purport to apply to the eSafety Commissioner, employees of her office, or contractors of her office, relating to:

- communication and media announcements
- official use of social media by the Commissioner, her office, or media/comms staff
- process for release of public documents and engaging in public consultation.

This should include both documents formulated within the eSafety Office, and documents created by other government agencies which the eSafety Office applied, circulated to staff, or considered itself bound by.'

The request covers the period of 1 September 2021 to 31 January 2022.

The following information is not relevant to your request and is to be redacted:

- personal information of public servants
- all information requiring consultation with third parties including personal and business information (Note that eSafety cannot identify the type of third party information within the documents as only third parties would be able to classify this information)

I have identified 24 documents which fall within the scope of your request.

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, 24, 26, 27, 27A, 37, 47C and 47E
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)
- the content of the documents that fall within the scope of your request, and
- the views of third parties consulted by eSafety under sections 27 and 27A.

Decision and Reasons for Decision

I have decided that of the 24 documents identified as relevant to your request:

- 13 are released in full
- 11 are released in part, and
- 0 are wholly exempt from release.

The attached schedule of documents provides a description of each document and my decision on access for each one. The reasons for my decisions are outlined below.

Although parts of certain documents have been refused access on the basis of certain exemptions, I have also referenced section 22 of the FOI Act in the schedule, to indicate some parts of their content are not relevant.

Exemption – Section 37 of the FOI Act – Documents affecting enforcement of law and protection of public safety

Under section 37 a document is exempt if its release would disclose information that could or would prejudice public safety and law enforcement.

The FOI Act states that, when deciding whether the disclosure of the information that would or could reasonably be expected to prejudice public safety and law enforcement, consideration must be given to the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

In considering whether to exempt the documents, I have considered and weighed factors for and against disclosure. 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 undermine the effectiveness, or allow circumvention, of eSafety's investigative and enforcement functions.

However, I have decided that disclosing one document in part would not reasonably be expected to provide information that could or would prejudice public safety and law enforcement and that these documents therefore can be released with redactions under the exemption for documents affecting enforcement of law and protection of public safety in section 37.

Having weighed these factors and determined that release at this time would be contrary to the public interest, I consider relevant material in the below document is exempt from release in part, under section 37 of the FOI Act:

Document 1

Public interest conditional exemption – Section 47C of the FOI Act – Deliberative Processes

Section 47C(1) provides that a document is conditionally exempt if its release would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency
- (b) a Minister, or
- (c) the Government of the Commonwealth.

Some of the documents relevant to your request contain information of deliberative matter, including deliberative processes, relating to the regulatory functions, governance, administration and stakeholder relations of eSafety.

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 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 for eSafety to evolve thoughts, deliberate and evaluate policy options and perform powers and functions conferred on it by the *Online Safety Act 2021* (Cth). This may affect the ability of eSafety to operate as effectively and efficiently as possible. Therefore, in combination with the inability to operate effectively and efficiently, this interest outweighs the public interest in disclosure.

Having weighed these factors and determined that release at this time would be contrary to the public interest, I consider relevant material in the below documents is exempt from release in part, under section 47C:

Documents 1, 2, 4, 5, 6, 7, 8, 12, 15 and 17

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 13 contain material that, if disclosed, would result in the disclosure of information relating to the operation of eSafety's functions under the *Online Safety Act 2021* (Cth).

Overall, I consider it would make it more difficult for eSafety to undertake the operations and functions required if disclosure would occur.

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 functions of eSafety in the future. The public interest weighs in favour of not disclosing this information, particularly given the need for eSafety to be able continue to engage in enforcement, education, and communication activities.

Having weighed these factors and determined that release at this time would be contrary to the public interest, I consider relevant material in the below documents is exempt from release in part, under section 47E of the FOI Act:

Documents 1 and 13

Final assessment of charges

Although your request has taken some time to process, I have decided not to impose a charge for processing 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 FOI@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. Relevant information in this regard is available 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 enquiries@esafety.gov.au.

Yours sincerely,

Maria Vassiliadis
eSafety Commissioner
Authorised decision maker pursuant to section 23(1) of the FOI Act

Attachments

1. Schedule of documents

SCHEDULE OF DOCUMENTS

Number	Date	Size	Description	Decision on Access	Exemptions of deletions on the grounds of relevance
1	2 September 2021	17 pages	Communications Plan for Regulatory Guidance	Released in part	Section 22 (third party information only) Section 37 Section 47C Section 47E
2	13 September 2021	22 pages	Communications Plan – Online Safety Grants Program	Released in part	Section 47C
3	14 September 2021	4 pages	Communications Plan – Beacon App	Released in full	Section 22 (third party information only)
4	29 September 2021	10 pages	Communications Plan – Industry Codes	Released in part	Section 22 Section 47C
5	1 November 2021	6 pages	Communications Plan – Cyberbullying Scheme Regulatory Guidance	Released in part	Section 22 (including third party information) Section 47C
6	12 November 2021	7 pages	Communications Plan – Adult Cyber Abuse Regulatory Guidance	Released in part	Section 22 (including third party information) Section 47C
7	20 December 2021	6 pages	Communications Plan – Online Content Scheme and Abhorrent Violent Conduct Powers Regulatory Guidance	Released in part	Section 22 (including third party information) Section 47C
8	6 January 2022	6 pages	Communications Plan – Online Safety Act Commencement	Released in part	Section 22 (including third party information) Section 47C
9	1 November 2021	4 pages	Be Connected Communications Strategy Attachment A	Released in full	
10	20 September 2021	7 pages	Be Connected Communications Strategy Attachment B	Released in full	Section 22 (personal information of third parties and public servants)
11	1 November 2021	19 pages	Be Connected Communications Strategy Attachment C	Released in full	
12	7 December 2020	1 page	Communications Tiered Planning Document	Released in part	Section 47C
13	7 December 2020	3 pages	Media Enquiry and Media Release Process Document	Released in part	Section 22 (third party information only) Section 47E
14	1 November 2021	11 pages	Be Connected Communications Strategy	Released in full	
15	4 November 21	4 pages	Communications Plan – Holiday Gift Guide 2021	Released in part	Section 22 (including third party information) Section 47C
16	4 October 2021	5 pages	Communications Plan – IBA Regulatory Guidance	Released in full	Section 22 (personal information of third parties and public servants)

17	15 December 2021	6 pages	Media Engagement Plan – Safer Internet Day 2022	Released in part	Section 22 Section 47C
18	August 2017	8 pages	Making Public Comment and Participating Online (social media) Guidance for Employees	Released in full	
19	17 March 2021		Australian Public Service Commission document: Social media: Guidance for Australian Public Service Employees and Agencies	Released in full - publicly available	
20	17 March 2021		Australian Public Service Commission Factsheet: Personal Behaviour on Social Media	Released in full - publicly available	
21	17 March 2021		Australian Public Service Commission document: Social media: Tips for Agencies	Released in full - publicly available	
22	17 March 2021		Australian Public Service Commission document: Social media: Tips for Employees	Released in full - publicly available	
23	17 March 2021		Australian Public Service Commission document: Case study - APS employee engagement on social media	Released in full - publicly available	
24	17 March 2021		Australian Public Service Commission document: Frequently Asked Questions: Personal Behaviour on Social Media	Released in full - publicly available	