



Australian Government
Department of Social Services

10 February 2015

By email: Pinar Yilmaz foi+request-841-17725522@righttoknow.org.au

Dear Ms Yilmaz

Freedom of Information (FOI) Request No. 14/15-087

1. I refer to your email dated 26 December 2014 to the Department of Social Services (the Department) in which you seek access under the *Freedom of Information Act 1982* (FOI Act) to:

"all Internal communication (emails, briefings and other means of communications) regarding "Armenian Genocide" and/or the "Armenian National Committee" since September 2013. "

2. The purpose of this letter is to notify you of my decision regarding access to documents that you requested under the FOI Act.
3. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

DECISION AND REASONS FOR DECISION

4. I have taken the following material into account in making my decision:
 - a. the FOI Act, in particular sections 22, 33, 47C, and 47F;
 - b. consultation with the Department of Foreign Affairs and Trade, the Office of the Parliamentary Secretary and a third party; and
 - c. the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.
5. The Department has located three documents relevant to the scope of your request.
6. I have decided to apply a partial exemption to Document 1 under section 33 of the FOI Act.
7. I have decided to apply partial exemptions to Document 2 under sections 22, 47C and 47F of the FOI Act.

8. I have decided to apply partial exemptions to Document 3 under sections 47C and 47F of the FOI Act.
9. The reasons for my decision are outlined below.

Section 22 – irrelevant information

10. Under section 22 of the FOI Act, the Department is permitted to delete information from documents containing matter that would otherwise render a document exempt in full or that would otherwise disclose information that would reasonably be regarded as irrelevant to the request.
11. Material reasonably regarded as irrelevant to your request has been removed from Document 2 under section 22 of the FOI Act.

Section 33 of the FOI Act – Documents affecting national security, defence or international relations

12. Under section 33 of the FOI Act, the Department may claim an exemption where disclosure of the document would, or could reasonably be expected to, cause damage to the Commonwealth's security, defence or international relations.
13. Document 1 is largely comprised of advice and recommendations from the Department to the Minister. The document was prepared to assist government to discharge their responsibilities and accountabilities in matters of international relations.
14. I have decided to partially exempt Document 1 of your request under section 33(a)(iii) of the FOI Act on the basis that the release of the relevant sentence and paragraph in the document could reasonably be expected to cause damage to the Commonwealth's international relations, specifically on the relationship between the Australian Government and a foreign government's embassy.
15. I have consulted with the Department of Foreign Affairs and Trade regarding this exemption.

Section 47F – personal privacy

16. Section 47F(1) of the FOI Act provides that '[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person'.

Personal information

17. Personal information under subsection 4(1) of the FOI Act 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.
18. Part of document 3 contains information about an individual, being their signature. I am satisfied that this information constitutes personal information for the purposes of section 47F (personal privacy) of the FOI Act.

19. Part of Document 2 contains information about several individuals, being mobile phone numbers. I am satisfied that this information constitutes personal information for the purposes of section 47F (personal privacy) of the FOI Act.

Unreasonable disclosure

20. Under subsection 47F(2) of the FOI Act, the Department must have regard to the following factors in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information:

- i. the extent to which the information is well known;
- ii. 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;
- iii. the availability of the information from publicly accessible sources; and
- iv. any other relevant matters.

21. In my view, the personal information contained in the documents is not available from publicly accessible sources or well known. I consider that release of the information does not assist in the understanding of the relevant documents and that it is unreasonable for the individuals involved to have their personal information released under the FOI Act in the circumstances of this request.

Public Interest

22. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. I have considered public interest factors in accordance with subsections 11B (3) and (4) of the FOI Act.

23. I acknowledge the FOI Act provides a mechanism for individuals to see what information is held on government files and that its objects include providing for a right of access to documents.

24. However, I am also of the view that there is a significant public interest in protecting the right to privacy of individuals and I believe it is reasonable to protect the personal information of Departmental staff and the staff of organisations external to the Department.

25. As noted above, I do not believe that disclosure of the personal information that is conditionally exempt under section 47F is needed to aid an understanding of the documents.

26. On balance, the private interest in the protection of personal information outweighs the public interest in disclosure on this occasion.

27. Accordingly, I am satisfied documents 2 and 3 are exempt in part under subsection 47F (1) of the FOI Act.

Section 47C – Deliberative processes

28. Subsection 47C(1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act 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; or*
- b. a Minister; or*
- c. the Government of the Commonwealth; or*
- d. the Government of Norfolk Island.*

29. Document 2 contains some deliberative matter in the email correspondence.

30. Document 3 contains some deliberative matter in the notations on the document.

31. I am satisfied these documents contain information which is deliberative matter, being opinions, advice and recommendations obtained, or prepared, for the deliberative processes relating to the Minister's functions.

32. I am satisfied this information is conditionally exempt under section 47C.

33. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of the public interest factors is set out below.

Public Interest

34. I have considered public interest factors in accordance with subsections 11B(3) of the FOI Act. In balancing the public interest, I have considered the following factors for and against disclosure.

35. I have considered the following factors in favour of disclosure:

- a. informing debate on a matter of public importance;
- b. informing the community of the Government's operations.

36. I have considered the following factors against disclosure:

- a. release of deliberative material about significant international policy advice could influence the decision maker or result in advice being given without consideration of all the issues;

- b. future advice will be prepared with FOI in mind and will not be comprehensive;
 - c. failure to comprehensively brief the government, or Minister, which will:
 - i. endanger the effectiveness of the agency's relationships with their Ministers; and
 - ii. interfere with the government or Minister discharging their duties and obligations.
37. I acknowledge there is a public interest in promoting the objects of the FOI Act, informing debate on matters of public importance and in promoting oversight of government operations.
38. Despite this, I am of the view that there is an inherent public interest in preserving the confidential nature of ministerial advice and ensuring the effective operations of the Government more broadly.
39. Publication of the documents in question could reasonably be expected to prejudice the effectiveness of the relationship between the Ministers and foreign governments, to the extent that the public interest is weighted against disclosure in this case.
40. Accordingly, I am satisfied documents 2 and 3 are partially exempt under section 47C of the FOI Act.

REVIEW RIGHTS

Internal review

41. Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date that you receive this letter.
42. If you choose to apply for internal review, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer authorised to do so within 30 days.

Information Commissioner review

43. 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 you receive this letter, and be lodged in one of the following ways:

Online: <https://forms.australia.gov.au/forms/oaic/foi-review/>

Email: enquiries@oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

In person: Level 3, 175 Pitt Street, Sydney NSW

44. More information about Information Commissioner review is available on the Office of Australian Information Commissioner website.

Go to: www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Please do not hesitate to contact me by email at foi@dss.gov.au if you have any questions.

Yours sincerely

FOI Officer
Information Law Team
Public Law Branch
Legal Services Group
Department of Social Services