

15 July 2021

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Request under *Freedom of Information Act 1982* for Access to Documents

I refer to your email dated 16 May 2021, requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**), received by Tourism Australia in relation to

1. *The Tourism Australia board papers (including any special board meetings) for the period covering 1 July 2006 through to 31 August 2006 inclusive, covering the separation/dismissal/termination of then Tourism Australia's managing director, Scott Morrison.*
2. *Any briefing/correspondence/emails between Tourism Australia and then Minister for Tourism the Hon Fran Bailey (and/or the Minister's office) for the period 1 July 2006 to 31 August 2006 associated with the separation/dismissal/termination of then Tourism Australia's managing director, Scott Morrison.*
3. *The Deed between Tourism Australia and Scott Morrison involving the separation payment made to Mr Morrison covering his separation/dismissal/termination from Tourism Australia. (the Request).*

Decision

I am the decision-maker for the purposes of section 23 of the FOI Act and this letter gives you notice of my decision.

A thorough and diligent search of the documents held by Tourism Australia has identified one document which fell within the scope of your request:

- document titled, "Board Meeting July 2006..." (**the Document**)

I confirm that Tourism Australia does not hold any documents which fall within items 2. and 3. of the Request.

I have decided to refuse you access to the Document.

Material taken into account

I have taken into account the following material in making my decision:

- the scope of the Request
- the content of the documents that fall within the scope of the Request;
- the FOI Act (specifically sections 47E and 47F);
- the views of third parties consulted by Tourism Australia under section 27 of the FOI Act; and
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the FOI Guidelines).

Reasons

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to part of the Document.

Section 47F of the FOI Act relevantly provides:

- '(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.'*

Personal Information

The term 'personal information' is defined as follows:

'...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.'*

I find that a part of the Document contains personal information being information about the separation from Tourism Australia of an identified individual.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the FOI Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

I am satisfied that the disclosure of the third party personal information would be unreasonable for the following reasons:

- it relates to aspects of individuals' personal affairs;
- you do not have consent from these individuals for the release of their personal information; and

- the information is private and not available in full or in part from publicly-accessible sources.

I have decided that the personal information included in the Document is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

'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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure as set out in section 11B. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- prejudice individuals' right to privacy in respect of their employment arrangements; and
- adversely affect or harm the interests of an individual in relation to their ability to negotiate any potential future arrangements.

Based on the above factors, I have decided that in this instance, the disclosure of a part of the Document would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

Section 47E of the FOI Act – certain operations of agencies

I have applied the conditional exemption in section 47E(c) to a significant part of the Document.

Section 47E of the FOI Act relevantly provides:

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

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by 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).

The FOI Guidelines provide at paragraph 6.114 that the 'management of personnel' includes:

the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety (my emphasis).

I find that the Document includes information relating to Tourism Australia's human resource activities, namely its approach to dealing with separation of a Managing Director. I find that the disclosure of this information would have a substantial adverse effect on the management of Tourism Australia personnel in that it would impact Tourism Australia's ability to negotiate future separation arrangements.

Public interest considerations

As for the to the conditional exemption at section 47F of the FOI Act, I need to consider and weigh up the public interest factors for and against disclosure of conditionally exempt information for the purposes of section 47E(c). Having regard to the factors in favour of disclosure set out in section 11B, I consider that it is not in the public interest to disclose this information in circumstances where:

- the disclosure would prejudice Tourism Australia's management of personnel; and
- the information does not inform debate on a matter of public importance.

In summary, I am satisfied that extensive parts of the Document are conditionally exempt under sections 47E(c) and 47F(1) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information.

I have considered whether it would be possible to provide you with an edited copy of the Document. I have had regard to the following at paragraph 3.98 of the FOI Guidelines in considering this:

'an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.'

Extensive redactions to the Document would be required to remove the conditionally exempt information, making the Document meaningless. Accordingly, I have decided not to release the Document to you.

Review rights

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 Tourism Australia 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 by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the 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. Go to: www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



Mark Craig
Executive General Manager, Corporate Services
Freedom of Information Officer