



Australian Government
Attorney-General's Department

Our ref: FOI22/043-IR; CM22/8643

7 July 2022

Mr Dominic Manganaro
By email: foi+request-8537-1daa91c5@righttoknow.org.au

Dear Mr Manganaro

Freedom of Information Request FOI22/043 – Internal Review decision

The purpose of this letter is to advise you of my decision following your request under the *Freedom of Information Act 1982* (FOI Act) for internal review of the Attorney-General's Department's (the department's) decision of 6 June 2022.

Your initial request

On 2 March 2022, you requested access to:

Legal advice provided by the Attorney Generals Department to the Federal Government related to both the closure and the subsequent re-opening of Australia's International borders from the period between March 2020 until January 2022. • Specifically any legal advice provided by the Attorney Generals Department to the Federal Government related to the Western Australian state border closures from the period between March 2020 until January 2022.

On 31 March 2022, following a period of liaison regarding the scope of your request, you proposed your request in the following terms:

In March 2020 the Federal Government announced their decision to close the Australian International Border. I am simply asking for the definitive legal advice (a single report or memorandum or email will suffice) provided by the Australian Attorney-General's Department that the Australian Government relied upon to finalise this decision.

On 3 May 2022, the department acknowledged your request and requested a 30 day extension under s 15AA of the FOI Act to process your request. You agreed to that extension and a decision in relation to your request was due on 6 June 2022.

The department's decision

On 6 June 2022, in response to your request, the department decided to refuse access in full to all documents, including attachments, on the basis that the material they contain is variously:

- exempt from the operation of the FOI Act pursuant to s 7(2)
- irrelevant to your request under s 22(1) of the FOI Act, and
- exempt pursuant to s 34(1)(d), 34(3), 42(1), 47C(1) and 47E(d) of the FOI Act.

On 7 June 2022, you requested internal review of that decision. You said:

I am dissatisfied with the response and the decision the AGD has made to reject my FOI 22/043 request and I am seeking an internal review of this matter for the following reasons:-

1. The Attorney Generals Department (AGD) in its decision to reject the FOI Request has provided a disappointing reply advancing at least 6 major exemption clauses from the FOI Act with the ultimate conclusion that it is "not in the public interest" to provide any of the information it identified at all.

2. The FOI request I have made is simple, concise and clear and simply seeking clarity on the justification for the publicly announced Australian International Border closures. In an attempt to obtain a sensible response the original FOI request was modified several times in accordance with specific advice provided by the Attorney Generals Department. The reason provided by the AGD for non release of this information is because it has decided that it is not in the public interest, is short sighted and simply incorrect. How can something related to public health be kept secret from Australian Citizens without inviting speculation about the real reason why the actual advice provided can not be made public, despite the extraordinary impact the International Border closures have had on the many Australians that were directly and adversely affected by these decisions.

3. The reason for the rejection based on the fact that the release of these documents are "not in the public interest" and not available for public release is also not entirely consistent with the FOI Act specifically Part IV, Division 2, section 34 (5) on the basis that they are directly related to a decision that has been officially disclosed and published and is now a historical fact. In any event this lack of transparency and failure to provide any convincing arguments to justify the restrictions imposed on Australian citizens creates the impression that the restrictions were arbitrary and excessive as information supporting the proportionality of the restrictions is not provided but cloaked as "confidential" and "not in the public interest" instead.

A decision in relation to your internal review request is due on 7 July 2022.

My decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests made to the department.

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

- the terms of your initial request
- the content of the documents identified as within scope of your request
- the provisions of the FOI Act
- the department's decision of 6 June 2022
- the terms of your internal review request, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines).

I am satisfied that the original decision was reasonable and that the exemptions applied were appropriate.

I note your internal review request outlined your disagreement with the application of public interest conditional exemptions, specifically s 47C (deliberative processes) and s 47E (certain operations of agencies). You argue it is in the public interest to release the relevant documents to which these exemptions applied.

I have assessed the arguments weighing in favour of disclosure of the information, including your submissions in your internal review request. However, for the reasons explained in *Attachment C – FOI*

Statement of Reasons to the department's decision, I have concluded that it is not in the public interest to release the information subject to the conditional exemptions.


I have decided to affirm the original decision.

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Dana, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Toni Pirani
First Assistant Secretary
Legal Services Policy Division

Attachments

Attachment A: Review rights – Information Commissioner Review



Australian Government
Attorney-General's Department

Attachment A - FOI Review rights

If you are dissatisfied with the decision of the department, you may apply for Information Commissioner review of the decision.

Information Commissioner review

Under s 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 the decision letter, and must be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>