

LEX1501

JS
C/O Right To Know
foi+request-8619-490d8d5b@righttoknow.org.au

Dear JS

Your freedom of information request no. LEX1501

I refer to your 17 March 2022 email correspondence to the Australian Electoral Commission ('AEC') in which you request access (your 'FOI Request') under the *Freedom of Information Act 1982* (the 'FOI Act') to documents about the Australian Electoral Commissioner Tom Rogers' involvement in the Sky News Australia program *The Campaign Uncovered*.

2 I am writing today to give you a decision about access to documents that you requested in your FOI Request.

SUMMARY

3 I, William Mueller of the AEC, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI Requests.

4 Specifically, you sought access to:

documents concerning or relating to the involvement of the Australian Electoral Commissioner Tom Rogers, in the documentary.

5 I identified four documents that fell within the scope of your FOI Request (the 'Relevant Documents').

6 These documents were located by

- (a) contacting the appropriate business area and requesting copies of the Relevant Documents
- (b) Conducting a search of Tom Rogers email inbox for the Relevant Documents.

7 The schedule of documents in **Error! Reference source not found.** provides a description of each of the Relevant Documents and the access decision for each of the Relevant Documents.

8 With regard to the Relevant Documents (set out in **Error! Reference source not found.**), I have decided to:

(a) grant access to edited versions of the documents;

9 More information, including my reasons for my decision, is set out below.

DECISION AND REASONS FOR DECISION

Decision

10 With regard to the Relevant Documents identified in **Error! Reference source not found.**, I have decided:

Edited copies

(a) to grant access in full to edited copies of all documents.

Material taken into account

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

- (a) The terms of your FOI request;
- (b) the content of the documents that fall within the scope of your FOI Request;
- (c) the FOI Act, specifically sections 11A, 11B, 22 and 47F;
- (d) the guidelines ('[FOI Guidelines](#)') issued by the Australian Information Commissioner under section 93A of the FOI Act; and,
- (e) the *Privacy Act 1988*.

Reasons

12 **Error! Reference source not found.** indicates each Relevant Document to which access is granted. My reasons for granting access are given below.

Public interest conditional exemptions—personal privacy

Findings

13 I found that the Relevant Documents contain:

- (a) The names, email addresses and other contact details of AEC staff; and
- (b) The name, email address and other contact details of a staff member of Sky News Documentaries

Consideration

14 Section 47F of the FOI Act conditionally exempts a document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (with certain exceptions regarding the disclosure to a person of their own personal information).

15 Subsection 47F(1) of the FOI Act provides:

47F Public interest conditional exemptions—personal privacy

General rule

- (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).

16 In making my decision I had regard to:

- (a) the extent to which the information is well known;
- (b) the availability of the information from publicly accessible sources;
- (c) Part 6 (Conditional Exemptions) of the FOI Guidelines;

Initial Outcome

17 Accordingly, I am satisfied that the document falls within the scope of the conditional exemption for personal privacy provided by section 47F of the FOI Act.

Weighing of public interest factors

18 Under subsection 11A(5) 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.

19 My weighing of public interest factors follows.

- (a) I identified the following harm that would affect the persons not within the scope of this request:
 - (i) There is a risk of harm to an individual by giving access to the individual's telephone number that flows from the use of that number to facilitate:
 - (A) harassing telephone calls at any time of day; and
 - (B) denial-of-service attacks.
 - (ii) There is a risk of harm to an individual in giving access to information about their name and email address, which may be used to facilitate harassment and identity theft.
 - (iii) There is a risk of harm to an individual in giving access to the individual's email address, which may be used to facilitate the service of documents in litigation.
- (b) I considered the following factors favouring disclosure:

Promoting the objects of the Act—

 - (i) increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
 - (ii) increasing scrutiny, discussion, comment and review of the Government's activities.

- (c) I considered the following factors that militate against disclosure:
 - (i) The matters canvassed at paragraph (a) above, are factors that should be considered as militating against access.
- (d) In accordance with subsection 11B(4) of the FOI Act I excluded from my consideration the following matters:
 - (i) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (ii) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (iii) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (iv) access to the document could result in confusion or unnecessary debate.

20 In considering the weighing of public interest factors I had regard to the FOI Guidelines at paragraphs 6.7–6.28.

21 In my view, the factors against disclosure of the documents outweigh the factors in favour of disclosure for the following reason:

- (a) The harms to the individuals identified in paragraph 19(a) of this letter may be substantial.

Final Outcome

22 Accordingly, I am satisfied that the personal information contained in the Relevant Documents are conditionally exempt under section 47F of the FOI Act and, because disclosure would be contrary to the public interest, that the documents should be treated as exempt from disclosure under the FOI Act.

Access to an edited copy given

23 In accordance with section 22 of the FOI Act, I next considered whether it is both possible and practicable to prepare an edited copy of each Relevant Document from which exempt and irrelevant material is redacted.

Findings

24 I found that:

- (a) it is possible to prepare an edited copy of each Relevant Document modified by deletions, ensuring that:
 - (A) access to each edited copy would be required to be given under section 11A (access to documents on request) of the FOI Act; and
 - (B) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the FOI Request;

- (b) it is reasonably practicable for the AEC to prepare each edited copy, having regard to:
 - (i) the nature and extent of the modifications; and
 - (ii) the resources available to modify each document; and
- (c) it is not apparent that you would decline access to each edited copy.

Consideration

25 The reason for making my finding in paragraph 24 of this letter in respect of the document is given in the relevant entry in Attachment A for the documents.

26 Section 22 of the FOI Act provides:

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and

- (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

27 I had regard to paragraphs 3.95–3.100 of the FOI Guidelines.

Outcome

28 I concluded that it is both possible and practicable to prepare an edited copy of each Document from which exempt and irrelevant matter is redacted.

YOUR REVIEW RIGHTS

29 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.

Internal review

30 Under section 54 of the FOI Act, you may apply in writing to the AEC for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

31 Where possible, please attach reasons why you believe review of my decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

32 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:	foidr@oaic.gov.au
post:	Director of FOI Dispute Resolution, GPO Box 5218, Sydney NSW 2001
fax:	02 9284 9666

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

QUESTIONS ABOUT THIS DECISION

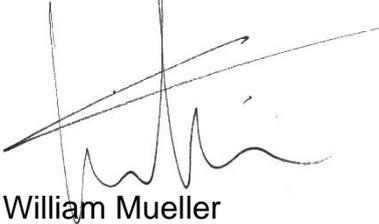
34 If you wish to discuss my decision, please contact me at:

email:	legal@aec.gov.au
fax:	02 6293 7657

post:
telephone:

Locked bag 4007, Canberra ACT 2601
13 23 26

Yours sincerely

A handwritten signature in black ink, appearing to read 'William Mueller', with a long horizontal stroke extending to the right across the top of the signature.

William Mueller
Manager, Corporate and Information Law
Legal Services Section
Legal and Procurement Branch

14 April 2022

Attachment A: SCHEDULE OF DOCUMENTS – LEX1501

Document no.	Date	Description	Decision on access	Exemption
1	25 January 2022	Email 1 regarding SkyNews Request	Release of edited copy; irrelevant information redacted under s 22(1)(a)(ii)	47F(1) and 11A(5)
2	28 January 2022	Email 2 regarding SkyNews Request	Release of edited copy; irrelevant information redacted under s 22(1)(a)(ii)	47F(1) and 11A(5)
3	2 February 2022	Email 3 regarding SkyNews Request	Release of edited copy; irrelevant information redacted under s 22(1)(a)(ii)	47F(1) and 11A(5)
4	13 February 2022	Email 4 regarding SkyNews Request	Release of edited copy; irrelevant information redacted under s 22(1)(a)(ii)	47F(1) and 11A(5)