



Our reference: FOIREQ22/00082

Julie

By email: [foi+request-8636-e2551a10@righttoknow.org.au](mailto:foi+request-8636-e2551a10@righttoknow.org.au)

## Your Freedom of Information Request – FOIREQ22/00082

Dear Julie

I refer to your request for access to documents made under the *Freedom of Information Act 1982 (Cth)* (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 22 March 2022.

### Scope of your request

In your request you sought access:

*.... all s 70 complaints made under the FOI Act about the OAIC, that were not a s 70 complaint about an act or practice directly engaged in by the Information Commissioner. I also request copy of the corresponding Resolve report for each of these s 70 complaints in scope.*

*All personal information about private individuals (persons who are not Commonwealth officials performing their duties) is irrelevant and exempt under s 22, requiring no consideration. All email addresses and telephone numbers are also irrelevant and exempt under s 22, requiring no consideration.*

### Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests. I have identified 16 documents within the scope of your request. I have redacted personal information under s 22 of the FOI Act, as irrelevant to your request. I have also identified a number of documents are exempt both in part and in full under s47E(d) of the FOI Act. I note that pages that are exempt in full have been removed from the documents provided to you.

### Reasons for decision

#### Material taken into account

In making my decision, I have had regard to the following:

- your FOI request of 22 March 2022
- the FOI Act, in particular s 22 and s47E(d)
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines)

### [Access to edited copies with exempt/irrelevant material deleted – s 22](#)

I have provided access to documents with exempt or irrelevant material deleted under s 22 of the FOI Act. Your request states *“All personal information about private individuals (persons who are not Commonwealth officials performing their duties) is irrelevant and exempt under s 22, requiring no consideration. All email addresses and telephone numbers are also irrelevant and exempt under s 22, requiring no consideration.”*

In the FOI Act, personal information has the same meaning as in the *Privacy Act 1988* (Cth) (Privacy Act). Under s 6 of the Privacy Act, personal information 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

I have carefully considered the relevant documents and deleted all personal information, including personal information that could be combined with other information to identify an individual. I have redacted information including the: names of complainants, names of representatives, case reference numbers, agencies, and specific details of the complaint where that information may make an individual reasonable identifiable.

### [Certain operations of an agency – s 47E\(d\)](#)

I have decided that 6 documents are exempt in part and 8 documents are exempt in full under s47E(d) of the FOI Act. These documents contain the individual complaints lodged with the OAIC and details of the OAIC network address.

Under s 47E(d) of the FOI Act, a document is conditionally exempt if its disclosure could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Section 47E(d) of the FOI Act states:

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

- ...
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The FOI Guidelines at [6.101] provides:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term ‘could reasonably be expected’ is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

Additionally, at [6.103] the FOI Guidelines further explain:

An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker’s statement of reasons, if they can be included without disclosing exempt material (s 26, see Part 3).

In order to determine whether disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC, I have taken into consideration the functions and activities of the OAIC.

A number of documents contain the individual complaints lodged with the OAIC. If this information was to be released publicly it may reasonably affect the willingness of individuals in the future to make such complaints to the OAIC. As an investigative body, this could have an adverse effect on the proper and efficient operations of the OAIC. In my view, the release of this information even with personal information removed as irrelevant could have a substantial adverse effect on the proper and efficient operations of the OAIC as it could reasonably affect the willingness of individuals to make such complaints in the future (refer to [6.122] of the FOI Guidelines).

In addition, a number of documents contain the network address for the OAIC’s IT system. The OAIC collects and stores a range of personal information about members of the public. The network address contains information about the OAIC’s IT system (including the network location and storage of information). I consider that disclosure of this information could compromise the safety and security of the storage of the information held by the OAIC. The impact of any compromise to the safety and security of the OAIC’s information systems would result in a serious adverse impact on the functions and responsibilities of the OAIC.

In the Information Commissioner review (IC review) case of *‘AW’ and Australian Taxation Office (Freedom of information)* [\[2014\] AICmr 1](#) (‘AW’), the then Freedom of Information Commissioner considered the decision by the Australian Taxation Office (ATO) to exempt user IDs under s 47E(d) of the FOI Act. The user IDs are used by ATO staff to access the ATO’s IT system. The Commissioner found that disclosing the user IDs ‘would have an adverse effect on the security of the ATO’s IT systems and could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the ATO’. In a series of subsequent IC review decisions, the former Australian Information Commissioner agreed

with the reasoning given by the Commissioner in 'AW' to find that user IDs used by ATO staff to access the ATO's IT system are exempt under s 47E(d) of the FOI Act.

I consider that the disclosure of individual complaints lodged to the OAIC and the network address of the OAIC's computer system could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations. I have decided that the individual complaints submitted to the OAIC and network address of the OAIC's IT system is conditionally exempt from disclosure under s 47E(d) of the FOI Act.

#### The public interest test – s 11A(5)

An agency cannot refuse access to conditionally exempt documents unless giving access would, on balance, be contrary to the public interest (s 11A(5)). The FOI Guidelines explain that disclosure of conditionally exempt documents is required unless the particular circumstances at the time of decision reveal countervailing harm which overrides the public interest in giving access.

In considering where the public interest lies, I must balance the factors for and against disclosure. Section 11B (3) of the FOI Act lists four factors which favour disclosure; one of these factors are relevant to this FOI request, disclosure will promote the objects of the FOI Act.

The FOI Act does not specify any factors against disclosure, however the FOI Guidelines provide a non-exhaustive list of factors against disclosure. In this case, I consider that disclosure could reasonably be expected to:

- impede the flow of information to .... regulatory agency; and
- prejudice the management function of an agency

In this particular case, I find that the public interest factors against disclosure outweighs the factor for disclosure. Whilst I acknowledge that there is a strong interest in promoting the objects of the FOI Act and allowing individuals to access to documents held by the OAIC, I have weighed this interest against the importance of maintaining the confidence of individuals to make complaints to the OAIC and protect the security of the OAIC IT systems. I have decided it would be contrary to the public interest to give access to the documents I have found to be conditionally exempt under s 47E(d) of the FOI Act. On this basis, I find that the documents in issue as identified on the schedule are exempt under s 47E(d).

Your review rights are outlined on the following page.

Yours sincerely

A handwritten signature in black ink that reads "E Elliott". The signature is written in a cursive style with a large, stylized initial "E".

Emily Elliott  
Senior Lawyer  
21 April 2022

If you disagree with my decision

#### Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Alternatively, you can submit your application by email to [foi@oaic.gov.au](mailto:foi@oaic.gov.au), or by fax on 02 9284 9666.

#### Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au), or by fax on 02 9284 9666.

#### Accessing your information

If you would like access to the information that we hold about you, please contact [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au). More information is available on the [Access our information](#) page on our website.

#### Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that it would be unreasonable to publish.

The documents I have decided to release to you do not contain personal information that would be unreasonable to publish. As a result, the documents will be published on our disclosure log in relation to this matter.