



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

Alex Pentland

FOI reference number: CB 22-008

Via email: foi+request-8702-eacc02b5@righttoknow.org.au

Dear Mr Pentland,

Decision made under the *Freedom of Information Act 1982* – Release in part

I refer to your request to the Department of Infrastructure, Transport, Regional Development and Communications (**the Department**) received on 05 April 2022 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**). You requested the following documents:

Any and all correspondence and documents after 1 January 2018 relating to decisions of the Classification Board and Classification Review Board regarding the Computer Games 'RimWorld' 2013, developed by Ludeon Studios.

Authority

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the Department in accordance with subsection 23(1) of the FOI Act.

Documents subject to this request

The Department has undertaken a search of its records and has identified forty-five documents that falls within the scope of your request. Please see the attached schedule.

Decision

I have made a decision to release five documents relevant to your request in full, thirty-four documents relevant to your request have been released in part and I have refused access to five documents. The documents that I have chosen to grant access to are set out in the attached schedule, together with the applicable exemption provisions for the documents I have chosen to refuse access to.

I have decided not to impose a charge for processing your FOI request.

Reasons for decision

In accordance with subsection 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to refuse access to the documents follow.

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

- the content of the document(s) that fall within the scope of your request;

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the FOI Guidelines**);
- sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth; and
- the following provision of the FOI Act:
 - section 47F – Personal privacy
 - section 47G (1)(b) – Business information

Statement of reasons

I have decided to grant partial access to the documents within the scope of your request as well as refuse access to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Section 47F (Personal privacy)

Section 47F 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 (including a deceased person).

The documents marked as partially exempt under this provision contain personal information, including names and phone numbers of staff from both inside and outside of this Department. This information is not in the public domain and I see no public purpose in disclosing it. I do not consider it appropriate to disclose personal information where it is not otherwise publicly available.

If this information were disclosed and made public there is a reasonable expectation that these details could be subject to misuse, contrary to the wishes of the individuals.

Accordingly, I have decided that the parts of the documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with subsection 11A(5) of the FOI Act.

Application of the public interest test:

Subsection 11A(5) of the FOI Act provides that an agency 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 would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- a) disclosure would promote the objects of the FOI Act;
- b) disclosure would inform debate on a matter of public importance;
- c) disclosure would promote effective oversight of public expenditure; and
- d) disclosure would allow a person to access his or her personal information.

I agree that disclosure would promote the objects of the FOI Act. I do not consider the personal information exempted in accordance with section 47F of the FOI Act if disclosed, would inform debate on a matter of public importance, or provide effective oversight of public expenditure. Further, the personal information redacted from the documents is not the applicant's own personal information so that public interest consideration is not relevant in this circumstance.

I also considered the following factors which do not favour disclosure:

- a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- b) the personal information is not well known;
- c) the persons to whom the information relates are not known to be (or to have been) associated with the matters dealt with in the documents; and
- d) the information is not available from publicly accessible sources.

As set out in subsection 1113(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- b) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- c) access to the document could result in any person misinterpreting or misunderstanding the document;
- d) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- e) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factors have been considered, as set out in subsection 1113(4) of the FOI Act. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Section 47G (1)(b) (Business Information)

A document is conditionally exempt if it discloses information (business information) concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information:

- *would, or could reasonably be expected to, unreasonably affect the person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs (s 47G(1)(a)); or*
- *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency (s 47G(1)(b)).*

Further, the Act states:

- *A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:
(a) the Commonwealth or a State; or
(b) an authority of the Commonwealth or of a State; or
(c) a Norfolk Island authority; or
(d) a local government authority (s 47G(4)).*

The document marked as exempt in part in accordance with this provision contains sensitive information, including a link to an internal system. This information is not publicly known and is not publicly available and, if disclosed, could reasonably be expected to prejudice the future supply of information to the Department. Accordingly, I consider the parts of the documents exempt under section 47G of the FOI Act meet the criteria for conditional exemption.

Application of the public interest test

Subsection 11A(5) of the FOI Act provides that an agency 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 would, on balance, be contrary to the public interest.

In order to assess whether the release of the exempt material would be contrary to the public interest, I considered the following factors at subsection 11B(3) of the FOI Act which favour disclosure:

- a) disclosure would promote the objects of the FOI Act;
- b) disclosure would inform debate on a matter of public importance;
- c) disclosure would promote effective oversight of public expenditure; and
- d) disclosure would allow a person to access his or her personal information.

I agree that disclosure would promote the objects of the FOI Act. However, I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of the inner workings of the Department. Therefore, I do not consider the disclosure of this information would be in the public interest to disclose.

Further, the documents do not include personal information, so disclosure would not provide the applicant with access to his or her personal information so this public interest factor is not therefore relevant in this circumstance.

I also considered the following factors which do not favour disclosure:

- a) disclosure would, or could reasonably be expected to, unreasonably affect the Department adversely in respect of its lawful business affairs;
- b) disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law of the Commonwealth or the administration of matters administered by the Department;
- c) disclosure could reasonably be expected to prejudice the Department's ability to obtain similar information in the future; and

As set out in subsection 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the documents would on balance, be contrary to the public interest:

- a) access to the documents could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- b) access to the documents could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- c) access to the documents could result in any person misinterpreting or misunderstanding the documents;
- d) the author of the documents was (or is) of high seniority in the agency to which the request for access to the documents was made; or
- e) access to the documents could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factor has been considered, as set out in subsection 11B(4) of the FOI Act.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Publication of information in the FOI disclosure log

Section 11C of the FOI Act requires publication of released documents on the Department's online FOI disclosure log, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable. I have decided that the documents released will be published on the disclosure log.

Your rights of review


If you wish to seek an internal review, you must apply to the Department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to FOI@infrastructure.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the Department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contacts

If you wish to discuss this matter, please contact the Department's FOI Coordinator on (02) 6274 6294 or via email at FOI@infrastructure.gov.au

Yours sincerely



Susan Bush
Acting Convenor
Classification Review Board

21 July 2022