



Administrative Appeals Tribunal

FOI ref: 2022/0059

7 June 2022

Alex Pentland

Email: foi+request-8851-514413a1@righttoknow.org.au

Dear Alex Pentland

Notice of Decision for Freedom of Information Request no. 2022/0059

The purpose of this letter is to give you a decision about access to documents that you have requested under the *Freedom of Information Act 1982 (FOI Act)*.

Summary

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

You lodged an FOI request on 3 May 2022 for access to:

“The Terms of Engagement for Graham Connolly as appointed member of the AAT.

Any correspondence between the President of the AAT and Graham Connolly.

Any correspondence between any of the Division Heads of the AAT and Graham Connolly”

As a result, I have identified 7 documents which fall within the scope of your request:

1. Instrument of Appointment of Graham Connolly
2. Assignment of Non-Presidential Members
3. Letter of Appointment and associated Human Resource file which includes Access to AAT Systems and Premises form, Employee details form, letter of engagement from AAT Recruitment, passport, TFN declaration, superannuation forms, Member Declaration Regarding Conflicts of Interest and WHS questionnaire
4. Remuneration Tribunal determination and Remuneration schedule

5. Conduct Guide for AAT Members
6. Member Induction Program 2022 – Day 1
7. Day 2 NDIS Division Member Induction Workshop May 2022

Decision

I have decided to:

1. Grant full access to:
 - Assignment of Non-Presidential Members
 - Remuneration Tribunal determination and Remuneration schedule
 - Conduct Guide for AAT Members
 - Member Induction Program 2022 – Day 1
 - Day 2 NDIS Division Member Induction Workshop May 2022
2. Grant partial access to:
 - Instrument of Appointment of Graham Connolly
 - Letter of Appointment and associated Human Resource file
3. Refuse access to:
 - Correspondence between Division Head and Graham Connolly
 - Correspondence between the President of the AAT and Graham Connolly

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

- the content of the documents that fall within the scope of your request;
- the FOI Act, specifically sections 11, 22, 24A, 47F and 47E;
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**); and

Instrument of Appointment

This document, signed by then Attorney-General Michaelia Cash on 31 March 2022, appoints several persons to the Administrative Appeals Tribunal (AAT). As your request clearly relates to the appointment and engagement of Graham Connolly as a Senior Member to the AAT, I find that the other entries appointed by the same instrument could not reasonably be regarded as relevant to the request and this document has been edited in accordance with s 22 of the FOI Act.

Correspondence between Division Head and Graham Connolly

Section 24A of the FOI Act provides that, after all reasonable steps have been taken to find the documents, access to documents may be refused if the documents do not exist or cannot be found. In this regard, I have liaised with the Migration and Refugee Division's (MRD) Executive Advisor who has stated that the Division Head of MRD, Deputy President Jan Redfern, has confirmed that she has not corresponded with Graham Connolly directly.

I am therefore satisfied that correspondence between Graham Connolly and the Division Head of the MRD does not exist, and I refuse access to the documents under section 24A of the FOI Act.

Correspondence between the President of the AAT and Graham Connolly.

I have also decided to refuse access to your request for correspondence between the President of the AAT and Graham Connolly under s 24A of the FOI Act after taking all reasonable steps to find the documents. In making my decision I liaised with the Director of Governance & Executive and Executive Advisor to the President who has conducted a search of the President's email inbox and sent items for the terms "Graham" and "Connolly" which yielded no results. She has also directly spoken the President who has confirmed she has not corresponded directly with Graham Connolly.

I am therefore satisfied that correspondence between Graham Connolly and the President of the AAT does not exist, and I refuse access to the documents under section 24A of the FOI Act.

Letter of Appointment file

A document titled 'Letter of Appointment File' has been provided by the Tribunal's Recruitment team and contains all material relating to Graham Connolly's employment with the Tribunal. This file contains an *Access to AAT Systems and Premises* form, *Employee details* form, letter of engagement from AAT Recruitment, copy of passport, Tax File Number declaration, superannuation forms, *Member Declaration Regarding Conflicts of Interest* and *Workplace Health and Safety questionnaire*.

I have decided to partially release the letter of engagement from AAT Recruitment and *Member Declaration Regarding Conflicts of Interest*. Information contained within the letter of engagement contains Mr Connolly's home address and Australian Government Staff number. I find that this is personal information, and that disclosure of this personal information would be unreasonable because an employee of the Tribunal would expect that their personal address and staff identifier number be kept confidential, and the Tribunal has obligations to maintain the privacy of its staff as required by the Australian Privacy Principles. The *Member Declaration Regarding Conflicts of Interest* contains the name, title and employment details of a third party. A person who is a friend, colleague or relation of an AAT Member and has their relationship declared on a *Member Declaration Regarding Conflicts of Interest* would also expect that their personal information be kept confidential and not released to the world at large. This information is personal information and is conditionally exempt under s 47F of the FOI Act.

Within the 'Letter of Appointment File' are direct phone numbers of AAT District Registrar, Julian and recruitment team member, Myles as well as direct internally used phone numbers and email addresses of HR and Payroll. These phone numbers and email addresses are conditionally exempt under s 47E(d) as disclosure could have a substantial adverse effect on the proper and efficient conduct of the operations of the AAT. The AAT does not release direct phone numbers or internal email addresses to avoid members of the public using incorrect channels to contact the Tribunal. This document is partially conditionally exempt under s 47E.

I have refused access to the *Access to AAT Systems and Premises* form, *Employee details* form, superannuation forms and a *Workplace Health & Safety questionnaire*. These documents exist for the purpose of HR and relate to the management of Tribunal personnel and are conditionally exempt under s 47E of the FOI Act as any disclosure could have a substantial adverse effect on the management or assessment of personnel by the Tribunal. These documents are conditionally exempt under s 47E(c) of the FOI Act.

I have refused access to the passport and Tax File Number declaration form under s 47F of the FOI Act. The Tax File Number Guidelines issued under s.17 of the Privacy Act 1988 protect the privacy of natural persons by regulating the collection, storage, use, disclosure, security and disposal of tax file number information. Unauthorised use or disclosure of tax file numbers is also an offence under the Taxation Administration Act, as well as constituting a breach of the Tax File Number Guidelines. I have also refused access to the copy of the passport. I also find that this is personal information and that disclosure of this personal information would be unreasonable because having regard to the matters in subsection 47F(2) this information is that of another person to whom the Tribunal has obligations to maintain confidentiality of this information.

Public interest

Having considered the public interest factors in section 11B and taking into account the circumstances relevant at the time of this decision, I find that disclosure of the above information would, on balance, be contrary to the public interest because the general public would expect that personal information of employees provided to an employer or HR be held confidentially and not released to other persons without explicit consent. Upon commencement of employment at the Tribunal, staff are advised that personal information supplied is required for the purpose of updating personal information on the Tribunals' payroll system and that this information will remain confidential and stored with HR. Such a policy is standard across the majority of employers and the general public would expect that employer's maintain staff personal information with the highest integrity. Releasing of personal information relating to personnel does not promote the objects of the FOI Act and I find that release of this information would be contrary to the public interest under s.11A (5), therefore it is exempt from disclosure.

I have also considered the public interest test in relation to the *Member Declaration Regarding Conflicts of Interest* which contains the name, title, employment details of a third party. I do not consider that release of this information would be in the public interest because the declaration of the relationship is pre-emptive of avoiding potential conflict. Making the declaration serves the public interest by stopping any potential future conflict of interest that may have arisen if the declaration had not been made. On

balance I find that protecting the privacy of a person who has been declared as simply known to Senior Member Connelly outweighs the benefit of releasing this information. Given that no conflict of interest has arisen here, I do not consider that release would promote the objects of the FOI Act nor inform debate on a matter of public importance.

Edited versions of the letter of engagement from AAT Recruitment and *Member Declaration Regarding Conflicts of Interest* have been provided in accordance with s. 22 of the FOI Act.

I consider that edited versions of the *Access to AAT Systems and Premises* form, *Employee details* form, superannuation forms and a *Workplace Health & Safety questionnaire* cannot be released under s.22 of the FOI Act because to delete all the conditionally exempt information would render the documents meaningless.

Your review rights

Information about how you can apply for a review of this decision or complain about how we have dealt with this matter is set out in the attached fact sheet, FOI 2.

If you have any questions about this decision, please contact me at foi@aat.gov.au.

Yours sincerely,

Marta

Authorised FOI Officer (APS 6)

Attachments

- FOI 2 – Information about reviews and complaints under the Freedom of Information Act
- Assignment of Non-Presidential Members
- Remuneration Tribunal determination
- Remuneration Schedule
- Conduct Guide for AAT Members
- Member Induction Program 2022 – Day 1
- Day 2 NDIS Division Member Induction Workshop May 2022
- Instrument of Appointment of Graham Connolly (partially redacted)
- Letter of Appointment file (partially redacted)

Information about reviews and complaints under the Freedom of Information Act

What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

How do I apply for internal review to the AAT?

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

How do I apply for review to the Australian Information Commissioner?

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

What if I want to make a complaint about the handling of a Freedom of Information request?

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

Where can I find further information or contact details for the Office of the Australian Information Commissioner?

Further information is available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au and you can contact the office on 1300 363 992 or by email at enquiries@oaic.gov.au.