



Our reference: FOIREQ22/00140

Attention: Julie

By Email: foi+request-8854-c1e6c27c@righttoknow.org.au

Your Freedom of Information Request – FOIREQ22/00140

Dear Julie,

I am writing to advise you of my decision in response to your application for internal review of a decision, made under the *Freedom of Information Act 1982* (the FOI Act) on 6 June 2022, by a delegate of the Information Commissioner.

An internal review decision is a ‘fresh decision’ made by a person other than the person who made the original decision (s 54C of the FOI Act).

Scope of your application for internal review

On 3 May 2022, you requested access to the following:

I request copy of all s 70 complaints made under the FOI Act about Veterans Affairs. I also request copy of the corresponding Resolve report for each of these s 70 complaints in scope.

I also request copy of any own motion investigation under the FOI Act about Veterans Affairs.

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.

On 2 June 2022, the delegate granted you full access to 21 documents, partial access to 48 documents, and refused access to 19 documents.

On 6 June 2022, you applied for internal review of the original decision dated 2 June 2022 as follows:

I am writing to request an internal review of Office of the Australian Information Commissioner's handling of my FOI request 's 70 complaints made under the FOI Act about Veterans Affairs'.

Apart from being a decision purporting to give partial access without giving such access, some of the exemption claims are untenable.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.righttoknow.org.au/request/s_70_complaints_made_under_the_f

On 1 July 2022, you wrote to the OAIC again and stated that:

That is a very high number of FOI complaints the OAIC has received about the Department of Veterans Affairs.

Has the OAIC received over 100 foi complaints about any other foi agency? I'm just trying to gauge how much of an outlier this is.

In response to your query, information about the OAIC's FOI complaint handling function can be found in our Annual Reports. These are available on our website: [Annual reports - Home \(oaic.gov.au\)](https://www.oaic.gov.au/annual-reports). Several documents relating to the OAIC's complaint handling function have also been released through other FOI requests. These documents are available on our disclosure log: [Our FOI disclosure log - Home \(oaic.gov.au\)](https://www.oaic.gov.au/disclosure-log).

Decision

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

I have interpreted your request for internal review as seeking review of the documents that were found to contain irrelevant and exempt material.

I have identified 88 documents within the scope of your application for internal review. I have decided to give you access in full to 21 documents, to give you access to part to 48 documents and to refuse access in full to 19 documents.

A schedule describing the documents and the access decision I have made is attached to this decision. This schedule records the decision made in FOIREQ22/00120 and on internal review. The schedule retains the original document numbers used in the schedule and documents provided to you in FOIREQ22/00120.

As I have not decided to provide you with access to additional material on internal review, I have not provided you with the documents as these have already been supplied to you in FOIREQ22/00120. Please advise if you wish to receive these documents again.

Reasons for decision

Material taken into account

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

- the decision under review and the documents identified as falling within scope of your request in that decision;
- your application for internal review of 6 June 2022, and the terms of your freedom of information request dated 2 May 2022;
- your FOI request FOIREQ22/00120 and material considered by the original decision maker;
- the FOI Act, in particular ss 11A(5), 17, 22, 24A, 47E(d) and 47F;
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), and
- relevant case law.

Irrelevant material – s 22

I have found material in 69 documents to contain irrelevant material, or material outside the scope of your request.

Section 22(1)(b)(ii) of the FOI Act provides that an agency may prepare an edited copy of a document by deleting information that is exempt or that would reasonably be regarded as irrelevant to the request.

The FOI Guidelines explain at [3.54] that a request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.

In your FOI request, you sought access to complaints made about Veterans Affairs and the corresponding Resolve report for each of these complaints. You also specified that the following material was irrelevant to your request:

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.

I have reviewed all documents located by the relevant line area. These documents contain information about government agencies other than Veterans Affairs and the information you

have identified as irrelevant to your request. Accordingly, I have found that this material is irrelevant to your request and it has been deleted under s 22 of the FOIA Act.

Whether reasonable steps were taken to find documents – s 24A

Section 24A requires that an agency take ‘all reasonable steps’ to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

A search and retrieval request was sent to the relevant line area, who conducted searches and located complaints about the Department of Veterans Affairs on the OAIC’s case management system Resolve. In relation to one complaint, the original complaint document could not be located. The line area advised that this document appears to have been destroyed in accordance with the OAIC’s records disposal authority. You can access the OAIC’s records disposal authority here: [Records authorities | naa.gov.au](https://recordsauthorities.naa.gov.au). The line area also advised that the OAIC has not conducted an own motion investigation into the Department of Veterans Affairs.

I consider that all reasonable steps have been taken to find documents in the scope of your FOI request and documents in relation to one complaint cannot be found and that documents in relation to an own motion investigation do not exist. Accordingly, I refuse access to these documents under s 24A of the FOI Act.

Certain operations of agencies exemption – s 47E(d)

I consider that several documents contain material that is conditionally exempt under s 47E(d) of the FOI Act. This material can be described as:

- the names of staff members of the Commonwealth Ombudsman
- documents relating to complaints that are ongoing
- the network address of the OAIC’s IT system

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).

Commonwealth Ombudsman

In order to determine whether the disclosure of the surnames of Commonwealth Ombudsman staff members would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Commonwealth Ombudsman, I have taken into consideration the functions and activities of the Commonwealth Ombudsman. I have also considered recent Information Commissioner review decisions about similar subject matter, including 'LY' and Commonwealth Ombudsman (Freedom of Information) [2017] AICmr 68 and 'PX' and Australian Federal Police (Freedom of information) [2019] AICmr 8.

The Commonwealth Ombudsman has procedures in place to manage complaints including a general line for the public to call. The direct contact details of Commonwealth Ombudsman employees are not publicly available and are not listed on the Commonwealth Ombudsman website. I am satisfied that the disclosure of the surnames of Commonwealth Ombudsman would have a significant adverse effect on the Commonwealth Ombudsman's ability to appropriately manage its complaints and investigation processes, by allowing members of the public to directly contact staff members, thus undermining the ability of the Ombudsman to appropriately receive and manage enquiries and complaints in accordance with its established procedures.

I am satisfied that the release of the surnames of Commonwealth Ombudsman staff members would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman's operations. I find that this material is conditionally exempt under section 47E(d) of the FOI Act.

Network address of the OAIC's IT system

Several documents contain the network address for the OAIC's IT system. 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 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 section 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 were exempt under section 47E(d) of the FOI Act.

I consider that the disclosure of 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 find that this material is conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Complaints that are current and ongoing

Several of the documents in scope contain material relevant to complaints that are ongoing. I consider that the disclosure of this material during an investigation would impede the conduct of these investigations. The OAIC is still in the process of considering the complaints and any relevant material obtained during the investigation of these complaints. Further, the parties to these complaints have yet to be advised of the outcome of any investigation. The [OAIC's Freedom of Information Regulatory Action Policy](#) advises at paragraph 70 that the Information Commissioner will not comment publicly about ongoing complaint investigations as the FOI Act provides that investigations must be conducted in private (see s 76(1) of the FOI Act).

I consider that the disclosure of material relevant to complaints that are ongoing would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations. I find that this material is conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Personal privacy exemption – s 47F

I consider that several documents contain material that is conditionally exempt under s 47F of the FOI Act. This material can be described as:

- personal leave details of staff members of the OAIC, the Department of Veterans Affairs and the Australian Government Solicitor (AGS)
- names of staff members of the Department of Veteran Affairs and AGS who were the subject of a complaint

As discussed in the FOI Guidelines and IC review cases, the main requirements of this public interest conditional exemption are that a document contains 'personal information' and that disclosure in response to the applicant's FOI request would be 'unreasonable' (s 47F(1)).

Personal Information

Subsection 4(1) of the FOI Act provides that ‘personal information’ has the same meaning as in the Privacy Act 1988 (the Privacy Act).

I am satisfied that material described above is ‘personal information’ for the purposes of s 47F(1) of the FOI Act.

Would disclosure involve an unreasonable disclosure of personal information?

When determining whether disclosure of information would involve an unreasonable disclosure of personal information, s 47F(2) provides that a decision maker must have regard to:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly accessible sources, and
- any other matters that the agency or Minister considers relevant.

The FOI Guidelines explain at [6.138] that the test of ‘unreasonableness’ in s 47F ‘implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals’.

Consistent with *FG and National Archives of Australia* [2015] AICmr 26, the FOI Guidelines explain that other relevant factors include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency’s collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

Documents containing personal leave details of staff

Material relating to the personal leave of agency staff members of OAIC, the Department of Veterans Affairs and AGS is not in the public domain, is information about the private affairs of these staff members and is not well known. Disclosure of this information, due to its wholly private nature, would not advance the public interest in government transparency and integrity. I consider that it would be unreasonable to disclose this information and find that this material is conditionally exempt from disclosure under section 47F of the FOI Act.

Names of agency staff members subject to the complaint

The names of staff members of the Department of Veterans Affairs and the OAIC have been released to you in full where these staff members are undertaking their usual duties or responsibilities.

The documents within the scope of your request also contain the names of staff members who are the subject of a complaint. These complaints include information about these staff members and allegations about their conduct. In these circumstances, I consider that the disclosure of the names of these staff members would be unreasonable. I consider that:

- the information is not well known
- the staff members are not known to be associated with the matters contained in the documents
- the staff members names are not publicly available
- the disclosure of the names of these staff members would cause stress to the staff members, particularly in circumstances where any allegations were found to be unsubstantiated
- this disclosure of these names in this FOI request would be to the world at large as the request was made via the Right to Know website.

I consider that it would be unreasonable to disclose this information and find that this material is conditionally exempt from disclosure under section 47F of the FOI Act.

Public interest – 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 the AAT case of *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269, Deputy President Forgie explained that:

... the time at which I make my decision for s 11A(5) requires access to be given to a conditionally exempt document “at a particular time” unless doing so is, on balance, contrary to the public interest. Where the balance lies may vary from time to time for it is affected not only by factors peculiar to the particular information in the documents but by factors external to them.¹

¹ *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269 [133].

I must consider whether, disclosure of the information found to be conditionally exempt would be contrary to the public interest.

The FOI Guidelines provide a further non-exhaustive list of factors favouring disclosure (see [6.19]). I do not consider that the material that has been identified as exempt under s47E(d) and s47F of the FOI Act would enhance the scrutiny of government decision making.

I consider that the only public interest factor favouring disclosure in this case is that disclosure would promote the objects of the FOI Act generally through promoting access to government held information.

Against this factor, I must balance the factors against disclosure. The FOI Act does not specify factors against disclosure, however the FOI Guidelines at paragraph [6.22] provides a non-exhaustive list.

I consider that the relevant factors against disclosure in this instance are:

- disclosure of the surnames of Commonwealth Ombudsman staff is reasonably likely to prejudice the proper and efficient conduct of the complaint handling and investigation functions of the Ombudsman
- disclosure of the OAIC's network address could reasonably be expected to prejudice the security of the OAIC's IT systems and could therefore be reasonably expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations
- Disclosure of the personal information of OAIC, Department of Veterans Affairs and AGS staff (names of staff members subject to a complaint and the personal leave arrangements of staff members) would prejudice the protection of these individuals' right to privacy, as well as potentially exposing these individuals to unnecessary stress

Accordingly, I am satisfied that the public interest factors against disclosure outweigh the public interest factor in favour of disclosure.

I have decided that at this time, giving you access to the material which I have found to be conditionally exempt under s 47E(d) and 47F of the FOI Act, would, on balance, be contrary to the public interest.

Please see the following page for information about your review rights.

Yours sincerely

Emma Liddle
Director, Legal

6 July 2022

If you disagree with my decision

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_

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, 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. More information is available on the Access our information page on our website.