



Our reference: FOIREQ15/00006

Mr Peter Timmins

By email: foi+request-892-3549134d@righttoknow.org.au

Dear Mr Timmins

Outcome of your Freedom of Information request

I refer to your request for access to information under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Summary

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

On 28 January 2015, you requested access to:

documents concerning discussions with the Attorney General's Department about the conduct of OAIC functions from 1 January 2015 including proposals put to or received from the Department concerning funding and staffing, and any agreement or understanding reached on these and related matters.

The decision was due to be provided to you on 27 February 2015. On 27 February 2015, you agreed to extend the processing time under s 15AA of the FOI Act to 13 March 2015 and also agreed to revise the scope of your FOI request to documents created on or after 30 September 2014. On 13 March 2015, you agreed to further extend the processing time under s 15AA to 20 March 2015.

On 16 and 17 March 2015, you revised the scope of your request to exclude the names and direct contact details of non-SES officers and the direct contact details of SES officers. On 19 March 2015, you revised the scope of your request to exclude the attachments to documents 61 and 64 which are excel spreadsheets outlining OAIC assets. We attempted to contact you on 19 March 2015 to advise you that we were having technical difficulties with providing you the documents by 19 March 2015.

I have found 64 documents that fall within the scope of FOI request. I did this by liaising with the Information Commissioner and the Privacy Commissioner who are responsible for the conduct of the OAIC's functions. The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

With regards to the documents you requested:

- I have decided to grant you access to edited copies of documents 1-5, 8-25, 29-34, 43-49, 50-58 and 61-64 with irrelevant matter deleted under s 22 and with exempt matter deleted under the deliberative processes exemption (s 47C), and the personal privacy exemption (s 47F).
- I have decided to refuse access to documents 6-7, 26-28, and 35-42 in their entirety under s 47C.

I have set out my reasons for this decision below. The Schedule sets out each document which falls within the scope of your request and the relevant decision.

Material taken into account

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

- the content of the document that fall within the scope of your request
- your agreement to revise the scope of your request to exclude certain material
- the FOI Act (specifically ss 11A, 22, 47C, 4F)
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act
- submissions from the Attorney-General's Department, Attorney-General's Office, Australian Public Service Commission, Australian Human Rights Commission, Department of the House of Representatives and the Department of Prime Minister and Cabinet.

Reasons for decision

Irrelevant material (s 22(1)(a))

Section 22 of the FOI Act allows the Office of the Australian Information Commissioner (OAIC) to prepare an edited copy of a document so as not to disclose any information that would reasonably be regarded as irrelevant to the FOI request.

Documents 1-5, 8-25, 30-34, 44-47, 50-57 and 59-64 contain the names and contact details of various Australian Public Service (APS) staff. As you have revised the scope of your FOI request to exclude such information, I have deleted the names and direct contact details of non-SES officers and the direct telephone numbers of SES-officers under s 22(1)(a).

Documents 61 and 64 contain attachments which are excel spreadsheets listing OAIC assets. As you have revised the scope of your request to exclude these attachments, these attachments will not be included as part of the package of documents that will be provided to you.

Accordingly, I have decided to grant you access to edited copies of the documents with deletions, as set out in the Schedule.

Deliberative processes exemption (s 47C)

I have decided that documents 6-7, 26-28, and 35-42 are exempt in full under s 47C and that documents 1-3, 8-21, 29-34, 43, 48-49, 58, 61-63 contain material which is exempt under s 47C.

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency..

In my view, some of the material exempted in documents 1-3, 8-21, 29-34, 43, 48-49, 58, 61-63 and all of the material exempted in documents 6-7, 26-28 and 35-42 is opinion, advice or recommendation, prepared in the course of deliberations within the OAIC and between the OAIC and other agencies such as the Attorney-General's Department. In particular, the material exempted is deliberative material prepared by or provided to the OAIC concerning the functions of the OAIC after 1 January 2015, the functions of which are dependent on the passage of the *Freedom of Information Amendment (New Arrangements) Bill 2014*.

Public interest test

Section 11A(5) of the FOI Act sets out the public interest test which must be considered if a document is conditionally exempt. The provision provides that the agency or Minister 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 at that time would, on balance, be contrary to the public interest.

In assessing whether the disclosure of a document would be contrary to the public interest, I must balance the factors for and against disclosing the document. The public interest test is weighted towards providing access. Therefore, if the factors for and against releasing a document are even, we must provide access to the document.

Of the factors favouring disclosure set out in s 11B(3), two are relevant to this FOI request:

- promoting the objects of the FOI Act and
- inform debate on a matter of public importance.

These factors must be balanced with the factors against disclosure. The FOI Act does not list any factors weighing against disclosure. However, I have identified the following factors as relevant:

- the opinions, recommendations and discussions set out in the documents anticipate the passage of the *Freedom of Information (New Arrangements) Bill 2014*. The Bill has not passed through parliament.
- disclosure of the documents could reasonably be expected to impact on the ability of the OAIC to obtain full opinions and recommendations from relevant agencies.

In my view, the factors against disclosure are significant at this point in time and outweighs the factors in favour of disclosure.

Accordingly, I am satisfied that the identified material within documents 1-3, 8-21, 29-34, 43, 48-49, 58, 61-63 and the entirety of documents 6-7, 26-28, and 35-42 is conditionally exempt under s 47C of the FOI Act and that disclosure would be contrary to the public interest.

Personal privacy exemption (s 47F)

I have decided that documents 34 and 55-57 contain material which is exempt under s 47F.

Section 4F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about certain identified individuals.

In my view, some of the material exempted in documents 34 and 55-57 contain personal information concerning certain individuals' personal leave. In my view, the release of such information would be an unreasonable disclosure of personal information about those individuals.

Public interest test

Section 11A(5) of the FOI Act sets out the public interest test which must be considered if a document is conditionally exempt. The provision provides that the agency or Minister 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 at that time would, on balance, be contrary to the public interest.

In assessing whether the disclosure of a document would be contrary to the public interest, I must balance the factors for and against disclosing the document. The public interest test is weighted towards providing access. Therefore, if the factors for and against releasing a document are even, we must provide access to the document.

Of the factors favouring disclosure set out in s 11B(3), I consider one to be relevant: promoting the objects of the FOI Act. As noted above, the FOI Act does not list any factors weighing against disclosure. However, I consider that disclosure of such information could reasonably be expected to prejudice the protection of an individual's right to privacy.

In my view, the factor against disclosure outweighs the factor in favour of disclosure. Accordingly, I am satisfied that the identified material within documents 34 and 55-57 is conditionally exempt under s 47F of the FOI Act and that disclosure would be contrary to the public interest.

If you disagree with my decision

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

You have the right to apply for an internal review of my decision under section 54A of the 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.

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 30 days. Your application must provide an address (including 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 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, it is likely that the Information Commissioner will decide (under section 54W(b) of the Act) not to undertake an IC review on the basis that it is desirable that my decision be considered by the AAT.

Section 57A of the 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 internal review or IC review can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you may submit your application or complaint by email to enquiries@oaic.gov.au, or by fax on 02 9284 9666. For further information, please call our enquiries line on 1300 363 992.

Questions about this decision

If you wish to discuss this decision, please contact me on 1300 363 992.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karen Toohey', written in a cursive style.

Karen Toohey
Assistant Commissioner
Dispute Resolution Branch
23 March 2015