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Freedom of Information (FOI) request

Revised decision under section 55G of the Freedom of Information Act 1982

Reference: FOI/2022/202IC

To: Mr Alex Pentland

By email: foi+request-9138-80c44cbf@righttoknow.org.au

CC: foidr@oaic.gov.au

The primary decision

On 8 September 2022, the Department of the Prime Minister and Cabinet (the **Department**), notified Mr Alex Pentland (the **applicant**) of its decision (the **primary decision**) in relation to the applicant's request for access under the *Freedom of Information Act 1982* (the **FOI Act**), made in the following terms:

The agenda, minutes, and recordings of decisions for the National Cabinet Meeting held on 16 July 2022.

The primary decision maker was Ms Lauren Le Cerf, Assistant Secretary, Commonwealth-State Relations Branch. The Department identified two (2) documents within scope of the request (the **requested documents**).

The primary decision decided to refuse access:

- In full, to Documents 1 and 2 on the basis that the document contained information that is conditionally exempt under section 47B (damage to Commonwealth-state relations) of the FOI Act, and disclosure would be contrary to the public interest; and
- In part, to Document 2 on the basis that part of the document contained information that is conditionally exempt under section 47C (deliberative processes) of the FOI Act, and disclosure would be contrary to the public interest.

Internal review decision

On 12 September 2022, the applicant sought internal review of the Department's primary decision. The internal reviewer was Ms Lee Steel, First Assistant Secretary, Intergovernmental Relations and Reform Division.

The Department notified the applicant of an internal review decision on 10 October 2022. The decision-maker affirmed the primary decision insofar as it related to the application of the section 47B (damage to Commonwealth-state relations) exemption over both documents.

The decision-maker varied the decision in relation to the application of the section 47C (deliberative processes) exemption.

Review by the Information Commissioner (IC)

On 19 April 2023, the Office of the Australian Information Commissioner (the **OAIC**) notified the Department under section 54Z of the FOI Act that the IC would review the primary decision following a request for IC review from the applicant on 11 October 2022.

Revised decision under section 55G

Section 55G of the FOI Act

Section 55G(1)(a) of the FOI Act provides that after an application is made to the IC for review, an agency or Minister may (at any time during the IC review) revoke or vary an access refusal decision to favour the applicant by giving access to a document in accordance with the request.

Section 55G (2) of the FOI Act provides that an agency must notify the IC of the new decision (section 55G(2)(a)) and the revised decision will be the decision under review (section 55G(2)(b)).

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

I have reviewed this matter and consider I am in a position to grant access to documents in accordance with your request. Accordingly, I have decided to make this revised decision under section 55G of the FOI Act.

Material taken into account

In reaching my decision I referred to the following:

- the FOI request;
- the primary decision;
- the internal review decision;
- the requested documents;
- the request for IC review;
- submissions from the applicant;
- consultation comments from the states and territories;
- the FOI Act; and

- the Guidelines issued by the Information Commissioner¹ (the FOI Guidelines).

Documents in scope of request

Two documents have been identified as in scope of the terms of your request, being the agenda and record of meeting of the 16 July 2022 National Cabinet meeting.

Revised decision and reasons

I have decided to grant access to the 2 documents in full.

I have reviewed all material available to me, including the requested documents and consultation comments from third parties.

In these circumstances, I do not consider that disclosure of the requested documents would cause damage to Commonwealth-state relations or constitute the disclosure of deliberative matter for the purposes of sections 47B and 47C of the FOI Act.

Accordingly, I have decided to release the documents to you in full.

Publication of documents

Under section 11C of the FOI Act, the Department will arrange to publish the documents released to you on the Department's FOI Disclosure Log.²

Review rights

The FOI Guidelines state that:

*A revised decision does not automatically conclude the IC review. The revised decision will be the decision under review (s 55G(2)(b)). The OAIC will generally consult the applicant as to whether they wish to continue the IC review on the basis of the revised decision.*³

FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. If you are not satisfied with our response, you can make a complaint to the OAIC. A complaint to the OAIC must be made in writing.

More information about complaints is available on the OAIC website [here](#).⁴

¹ s 93A of the FOI Act

² <https://www.pmc.gov.au/government/departmental-foi-disclosure-logs>

³ FOI Guidelines [10.70]

⁴ <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint>

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If you wish to discuss any aspect of your request, you can contact the FOI Section by email at foi@pmc.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "Hope Peisley". The signature is written in a cursive, slightly slanted style.

Hope Peisley
Assistant Secretary
Commonwealth-State Relations Branch
Department of the Prime Minister and Cabinet
13 June 2023