



Our reference: FOIREQ22/00272

**Attention: Julie**

**By email:** [foi+request-9194-5d782e22@righttoknow.org.au](mailto:foi+request-9194-5d782e22@righttoknow.org.au)

Your Internal Review Application – FOIREQ22/00272

Dear Julie

I am writing to advise you of my decision in response to your application for internal review made on **10 September 2022** of the decision in FOIREQ22/00199.

### Original FOI Decision

On 27 July 2022, you applied to the OAIC for access to the following:

*“I request copy of any currently used document of the OAIC (which the FOI Act states is any document is in the possession of the agency, whether created in the agency or received in the agency) that sets out how any service complaint about the OAIC, any foI complaint about the performance of functions or the exercise of powers under the FOI Act made by the OAIC, any IC review requested on an OAIC FOI decision, and any privacy complaint about any act taken by the OAIC, is to be managed by the OAIC.*

*Documents related to any such policy or procedure no longer followed by the OAIC are out of scope.”*

On 26 August 2022, the OAIC made a decision in relation to your request. **4 documents** were identified as being within the scope of your request. You were granted access to all 4 documents in full, with all of these documents being publicly available resources that can be found on the OAIC website.

### Internal review

On 10 September 2022 you sought internal review of this decision stating:

*“I am writing to request an internal review of Office of the Australian Information Commissioner's handling of my FOI request FOIREQ22/00199 'Policy on management of service complaints, foI complaints, and privacy complaints about the OAIC'.*

*It is clear an inadequate search has been performed by the original delegate given the OAIC holds/controls access to documents in scope (unlike the guidelines), given the*

*OAIC's own references to these D reference documents in documents released here on Right to Know.”*

### **Material taken into account**

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

- your original freedom of information request FOIREQ22/00199 dated 27 July 2022
- the decision of the delegate dated 26 August 2022 the subject of this internal review and accompanying schedule and documents
- your request for internal review dated 10 September 2022
- the FOI Act, in particular ss 22, 47E(d), and 47F
- relevant case law, and
- the FOI Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

### **Internal Review Decision**

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

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 *Freedom of Information Act 1982* (the FOI Act)). I have had regard to, but not relied on, the delegate’s original Freedom of Information (FOI) decision.

I have decided to vary the decision to release 4 documents to you in full. In this internal review decision I have identified 15 documents within the scope of your request. I have decided to release 14 documents to you in full and 1 document in part.

Details of my decision are included in the attached schedule and the reasons for my decision are set out below.

## Searches undertaken

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.

The FOI Guidelines at [3.89] explain:

*“Agencies and ministers should undertake a reasonable search on a flexible and common-sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency’s operating environment.*

*At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:*

- *the subject matter of the documents*
- *the current and past file management systems and the practice of destruction or removal of documents*
- *the record management systems in place*
- *the individuals within an agency who may be able to assist with the location of documents, and*
- *the age of the documents”*

I note that in your internal review request, you stated the following:

*“It is clear an inadequate search has been performed by the original delegate given the OAIC holds/controls access to documents in scope (unlike the guidelines), given the OAIC’s own references to these D reference documents in documents released here on Right to Know.”*

In light of your concerns, in processing this internal review, a staff member of the OAIC Legal Services team sent out search and retrieval requests to the FOI Regulatory, Privacy, and Enquiries line areas, requesting that they search for documents within the scope of your request. 15 documents were identified from these line areas as falling within your request. I note that the document titled “External complaints about OAIC employees or contractors – overarching policy” and “Privacy Complaints about the OAIC” were previously released to you in the original decision the subject of this internal review, as a publicly available document. For the sake of completeness, I have decided to re-release these documents to you in pdf form in this internal review decision.

I note that your request was specifically for any currently used document that sets out how the OAIC manages IC review requests, service complaints, FOI complaints,

and privacy complaints about the OAIC itself, not how the OAIC manages these matters generally. Documents that do not specifically set out how the OAIC manages complaints about itself, or documents that are not currently used by the OAIC, have not been included as they are outside the scope of your request.

Regarding your reference to other “*reference documents in documents released here on Right to Know*” in your internal review request, searches were conducted on Right to Know in an attempt to determine what reference documents you were referring to. No additional documents were identified from these searches. If there is a specific document that you would like to request access to, we invite you to make an FOI request clearly identifying which document you are seeking.

#### Exempt material (s 22)

I have found certain documents contain exempt material, as outlined further below.

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.

1 document within the scope of your request contain material which is exempt from disclosure. On this basis, I have prepared the document for release by removing exempt material in accordance with s 22 of the FOI Act.

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

I have found documents to be exempt in part under section 47E(d) of the FOI Act.

The material and documents that I have found to be exempt under s 47E(d) of the FOI Act can be described as:

- The direct contact details and surnames of Commonwealth Ombudsman staff members, and
- The direct mobile phone numbers of OAIC staff members.

Under s 47E(d) of the FOI Act, a document is conditionally exempt if its disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The FOI Guidelines provides:

- at [6.101]: *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.*

- at [6.103]: *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).*

The term 'substantial adverse effect' explained in the Guidelines [at 5.20] and it broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'.

### **Commonwealth Ombudsman staff contact details and surnames**

I have decided that 1 document within the scope of your request is exempt in part as it contains the direct email addresses, phone numbers, and surnames of Commonwealth Ombudsman staff members.

In order to determine whether disclosure of the outlined material 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.

The office of the Commonwealth Ombudsman is created by the Ombudsman Act 1976 (Cth). Under this act, the Commonwealth Ombudsman functions to investigate complaints regarding the administrative actions of Federal Government departments, as well as certain private sector organisations.

In order to manage its complaint workload efficiently, the Commonwealth Ombudsman has procedures in place to manage complaints, which includes an online complaint form and 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 consider that, were the contact details or full names of Commonwealth staff members made available to the public, this would have a significant adverse effect on the Commonwealth Ombudsman's ability to appropriately manage its complaints and investigation processes, through allowing members of the public to directly contact individual staff members, undermining the ability of the Ombudsman to appropriately receive and manage enquiries centrally in accordance with its established procedures.

Relevantly, in the Information Commissioner review (IC review) case of 'PX' and Australian Federal Police (Freedom of information) [2019] AICmr 8 at [64], it was found that as the Commonwealth Ombudsman has in place "...procedures in place to manage their contact with members of the public and investigate complaints", the release of direct contact details of staff "...would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman's operations."

Considering my findings above, and in line with the above IC review decision 'PX' and Australian Federal Police, I am satisfied that the release of the direct contact details and surnames of Commonwealth Ombudsman staff members would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman's operations. I therefore find that the relevant material is conditionally exempt under section 47E(d) of the FOI Act.

### **OAIC staff mobile number**

The OAIC material that I have held to be exempt under section 47E(d) of the FOI Act in 1 document is the direct mobile contact details of an OAIC staff member.

In order to determine whether disclosure of this material would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC, I have taken into consideration the functions and activities of the OAIC.

In particular, I have had regard to the Australian Information Commissioner's Privacy Act powers and regulatory powers under the Australian Information Commissioner Act 2010 (Cth) (AIC Act) and the Privacy Act 1988 (Privacy Act).

The OAIC is an independent statutory agency within the Attorney-General's portfolio, established under the AIC Act. The OAIC comprises the Australian Information Commissioner and the Privacy Commissioner (both offices currently held by Angelene Falk), the FOI Commissioner (Leo Hardiman KC), and the staff of the OAIC.

The OAIC is established under section 5 of the AIC Act. Section 5 also provides that the Information Commissioner is the Head of the OAIC for the purposes of the Public Service Act 1999 (Cth). Section 5 further provides that for the purposes of the Public Governance, Performance and Accountability Act 2019 (Cth), the Information Commissioner is the accountable authority of the OAIC. Under the Privacy Act, the OAIC has a range functions and powers, including assessing and managing privacy complaints.

In 'WN' and Inspector General of Taxation [2020] AICmr 70 at [34] the Information Commissioner accepted that:

*"...unsolicited calls to IGT employees' direct telephone numbers and work mobile telephone numbers will fall outside the integrated service platform and would not be electronically recorded, adversely affecting accountability, transparency, quality assurance and the provision of support to employees in relation to those calls. While I have taken into account the applicant's submissions in this regard, on balance I find that this circumstance could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the IGT's operations."*

In this case, I am satisfied that the direct mobile telephone numbers of OAIC staff members are not public information and is not known to be associated with the OAIC's complaint handling and communication processes. The OAIC has established processes of communication in processing privacy complaints. A review officer is allocated to each privacy complaint and will be the main contact with the complainant and the respondent during the course of investigating the complaint. If these mobile phone numbers are made publicly available, unsolicited calls to that individual will impede the proper and efficient conduct of the OAIC's functions in conducting privacy complaints and performing its statutory functions. The effect of that disclosure is likely to be both substantial and adverse in that such communication will need to be redirected to the appropriate review officer handling the specific privacy complaint, causing some delay in addressing any relevant queries regarding the privacy complaint.

Further releasing individual mobile numbers of OAIC staff could expose the staff member to unsolicited and unwarranted text, calls or harassment, and impede their ability to perform their OAIC functions effectively, leading to a substantial adverse effect on the proper and efficient conduct of the OAIC's operations.

Therefore, I am satisfied that the direct mobile number of an OAIC staff members is conditionally exempt material under s 47E(d) of the FOI Act.

#### **Personal privacy conditional exemption – section 47F**

I have decided that the direct mobile number of the OAIC staff member is also conditionally exempt under s 47F of the FOI Act.

Section 47F of the FOI Act conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). This exemption is intended to protect the personal privacy of individuals.

### *Personal Information*

In the FOI Act, personal information has the same meaning as in the Privacy Act 1988 (Cth) (Privacy Act). Under section 6 of the Privacy Act, personal information means:

*Information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

- a) whether the information or opinion is true or not; and*
- b) whether the information or opinion is recorded in a material form or not*

I am satisfied that for the purposes of the FOI Act, a mobile telephone number of an individual is personal information.

### *Consideration*

In determining whether disclosure of personal information would be unreasonable, section 47F(2) of the FOI Act requires me to have regard to the following matters:

- the extent 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
- any other matters I consider relevant.

I consider that the release of the mobile telephone numbers of OAIC staff would be an unreasonable disclosure of personal information. The relevant mobile telephone number is not well-known nor available on publicly accessible sources. Noting that the FOI Act does not control or restrict any subsequent use of information, the release of this personal information has the potential to cause stress to these individuals and expose them to harassment, while being only incidental to the subject matter of this FOI request.

As per the recent *Administrative Appeal Tribunal decision of Chief Executive Officer, Services Australia and Justin Warren (Freedom of information)* [2020] AATA 4557, it may be unreasonable to release personal contact details of agency staff when such information is only of limited connection to the subject matter of the relevant FOI



request, such that release would not “*make any positive contribution to increasing public participation in Government processes or in increasing scrutiny, discussion, comment and review of the Government’s activities.*” [130]. I am satisfied that this is the case here and am therefore satisfied that the mobile telephone numbers of OAIC staff is conditionally exempt 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) FOI Act). 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 this case, I must consider whether disclosure of the documents at this time would be contrary to the public interest. I must consider whether disclosure of the documents at this time would be contrary to the public interest.

The FOI Guidelines provide a non-exhaustive list of factors favouring disclosure (see [6.19]). I consider the relevant public interest factor in favour of disclosure in this case is that the disclosure would promote the objects of the FOI Act. Other factors are not relevant.

Against these factors, 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 of factors against disclosure.

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

- disclosure of the direct contact details and surnames of OAIC and Commonwealth Ombudsman staff is likely to prejudice the proper and efficient conduct of these agencies, and
- disclosure of the details of the direct mobile number of an OAIC staff member can be reasonably expected to prejudice the protection of this individual’s right to privacy, as well as potentially exposing the individual to unnecessary stress, and increasing their risk of experiencing harassment.

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

## Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that it would be unreasonable to publish.

The documents I have decided to release to you contains exempt material. As a result, an edited version of the documents will be published on our [disclosure log within 10 days of providing you access](#).

Yours sincerely

**Jian Liu**

Acting Director, Legal  
10 October 2022

## **If you disagree with my decision**

### **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 (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.

s 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>  
10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Or by email to [foi@oaic.gov.au](mailto:foi@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 [foi@oaic.gov.au](mailto:foi@oaic.gov.au). More information is available on the [Access our information](#) page on our website.