



Australian Government

Office of the Australian Information Commissioner

Our reference: FOIREQ22/00271

**Attention: Julie**

**By email:** [foi+request-9195-c2e0ee25@righttoknow.org.au](mailto:foi+request-9195-c2e0ee25@righttoknow.org.au)

Your Internal Review Application - FOIREQ22/00271

Dear Julie

I am writing to advise you of my decision in response to your application for internal made on **10 September 2022** of the FOI decision in FOIREQ22/00198.

#### Original FOI Decision (FOIREQ22/00198)

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

*"I request copy of all s 15AB and s 15AC requests received by the OAIC from DVA in the period 1 June to 27 July 2022.*

*Personal information of private individuals (not Commonwealth employees and contractors) is irrelevant."*

On 29 July 2022 the OAIC wrote to you to ask if you were willing to exclude the names of private businesses from the scope of this request, for example, where the FOI request subject to the s15AB and s15AC applications from the Department of Veterans' Affairs (the Department) were made by a private business.

In an email to the OAIC, received on 1 August 2022 you stated:

*"You requested that I advise whether I am willing to exclude names of private businesses from the scope of this request (for example, where the FOI request subject to the 15AB and s 15AC applications from DVA was made by a private business).*

*Yes, you may."*

On 26 August 2022, the OAIC made a decision in relation to your request. 71 documents were identified as being within the scope of your request. You were granted access to 63 documents in part and refused access to 8 documents in full. Documents were held to be exempt in part under s 47E(c) and s 47E(d) of the FOI Act.

## 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 FOIREQ22/00198 'Section 15AB and Section 15AC requests from DVA'..."*

## Material taken into account

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

- your original freedom of information request FOIREQ22/00198 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 sections 22 and 47E(d)
- relevant case law
- 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 (section 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 identified 71 documents with the scope of your request. I have decided to release all 71 documents in part. In my internal review decision, I have decided to vary the material exempted from release. The additional material I have decided to release to you is as follows:

- information regarding dates throughout all 71 documents, and
- 8 documents in part which relate to extension of time requests that are now finalised.

In the original decision, I note that 10 documents were found to be exempt in part under s 47E(c) of the FOI Act. This exempt material was as follows:

- the surnames and direct contact details (such as email addresses and mobile numbers) of DVA staff members

In this internal review, this exemption has not been maintained, and this material is now only held to be exempt under s 47E(d). Please note that for the 8 additional documents that were previously exempted in full, I have provided an additional document bundle and schedule, to reduce confusion. There are therefore two schedules being released to you in this internal review. Details of my decision are included in the attached schedules and the reasons for my decision are set out below.

#### Irrelevant material (s 22)

I have found that all documents within the scope of your request 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 excluded as irrelevant from your request personal information of private individuals and organisations. Consistent with your request, I have deleted this irrelevant material from your request under s 22 of the FOI Act. In addition, a number of documents within the scope of your request contain material which is exempt from disclosure. On this basis, I have prepared the documents for release by removing exempt material in accordance with s 22 of the FOI Act.

Please note that in the original decision the subject of this internal review request, agency reference numbers were held to be exempt under s 47E(d). In this internal review I have decided that these are out of scope under s 22 of the FOI Act, by virtue of them being the personal information of private individuals/organisations (not Commonwealth employees and contractors) which you have stated is irrelevant.

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

I have found 71 documents exempt in part under s 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:

- material contained in and attached to extension of time applications submitted by the Department that is not related to you
- the Department staff surnames
- direct email addresses of the Department staff, and
- direct mobile phone numbers of the Department staff.

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 provide:

- 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’.

Material contained in and attached to extension of time applications submitted by the Department, that is not related to you

In processing the FOI request the subject of this review, the OAIC undertook courtesy consultation with the Department, which objected to the disclosure of this material. Based on the information before me at this time, I am satisfied that disclosure of some of this material would, or could be expected to substantially and adversely affect the proper and efficient operations of the OAIC. Therefore, I have decided to give you access to 71 documents in part.

In order to determine whether disclosure 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 range of functions and powers promoting access to information under the FOI Act, including making decisions on extension of time request matters.

The AAT has recognised in *Telstra Australian Limited and Australian Competition and Consumer Commission [2000] AATA 71 (7 February 2000)* [24] that the conduct of an agency's regulatory functions can be adversely affected in a substantial way when there is a lack of confidence by relevant parties in the confidentiality of the investigation process.

Noting that all the extension of time applications within the scope of your request have been finalised at the time of this internal review, I have decided to give you access to some material contained in these applications which the Department lodged with the OAIC. I have found only parts of these applications exempt under s 47E(d), comprising the material relating to specific FOI requests made by individuals who are not associated with you, as well as the sensitive parts of the Department's submissions to the OAIC that are particular to these FOI requests, and are particular to the extension of time applications that are unrelated to you.

While these applications have been finalised, I am of the view that the release of this material at this time to a third party who is not associated with the matter, via a public forum on Right to Know would negatively impact the OAIC's assessment process regarding extension of time requests. This is because if parties cannot be confident that the information they provide to the OAIC for the purposes of making an administrative decision will be kept confidential, this is likely to adversely affect the quality of the information received by the OAIC in making an assessment for extension of time applications in the future.

The disclosure of such information to third parties, who are not a party to these reviews and investigations, of the material within these matters, could significantly deter parties from providing this information to the OAIC in the future, or impact the openness and frankness of their submissions to the OAIC. As such, I consider the release of information that is not currently in the public domain would have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC.

## Surnames, Direct Email Addresses and Mobile Phone Numbers of the Department Staff

In the IC Review decision *‘LY’ and Commonwealth Ombudsman (Freedom of information)* [2017] AICmr 68 (17 July 2017) at [24] the Commissioner accepted that “giving the applicant access to the contact details would have a substantial adverse effect on the proper and efficient conduct of the Ombudsman’s operations under the Ombudsman Act 1976”. Having considered the material in this case, I consider the reasoning in ‘LY’ applies to the material in this case.

From the documents at issue, it appears that in general outgoing correspondence to members of the public, it is the practice of the Department to provide a general contact phone number and a general email address as the main point of contact for the Department. Due to the nature of the work of the Department, I consider that if the relevant material is disclosed, this will allow contact to be made to the individual officer of the Department rather than through the established contact arrangements. This would, or could reasonably be expected to substantially and adversely affect the efficient operations of the Department’s functions. I have reached this conclusion based on my examination of the relevant material, the fact that the surnames of Department officers were embedded in their direct contact email address, that their mobile phone numbers would provide direct access, and the reasoning in ‘LY’ which I consider is applicable here.

Therefore, I am satisfied that the surnames, direct email addresses and mobile phone numbers of the Department staff members are conditionally exempt from disclosure under s 47E(d) of the FOI Act.

Regarding the additional material released to you, I am satisfied that providing this material to you will not have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC.

### 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.

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 and inform debate on a matter of public importance. 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 material relating to extension of time request matters could reasonably be expected to prejudice an agency's ability to obtain confidential information
- disclosure of material relating to extension of time request matters could reasonably be expected to prejudice the proper and efficient conduct of the extension of time request review functions of the OAIC, and
- disclosure of the mobile phone numbers, direct email addresses and surnames of the Department's staff could reasonably be expected to prejudice the efficient operations of the Department's functions in maintaining their existing contact arrangements with members of the public.

I have decided that at this time, giving you full access to the documents, which I have found to be conditionally exempt under s 47E(d) 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>  
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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.