



Our reference: FOIREQ22/00374

Attention: Julie

By Email: foi+request-9232-c95577b1@righttoknow.org.au

Your Freedom of Information Request – FOIREQ22/00374

Dear Julie

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 5 November 2022.

In your request you seek access to the following:

“I request copy of records of all third party consultation the OAIC carried out for FOIREQ22/00211 and for copy of the Resolve report for FOIREQ22/00211.”

Decision

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

I have identified 5 documents within the scope of your request. I have made a decision to:

- grant you access to 4 documents in full; and
- grant you access to 1 document in part.

Reasons for decision

Material taken into account

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

- your freedom of information request dated 5 November 2022;
- the documents at issue;
- relevant case law;
- submissions made by third parties;

- the FOI Act, in particular ss 3, 11, 11A, 15, 17, 22, 47E(d) and 47F; and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines).

Access to edited copies with exempt matter deleted (s 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt or irrelevant to the request.

I have determined that an exemption under the FOI Act applies to material in 1 document. Accordingly, I have made an edited copy of the document which removes the exempt material in accordance with section 22(1)(a)(i).

Proper and efficient conduct of the OAIC's operations (Section 47E(d))

In accordance with section 47E(d) of the FOI Act, I have made a decision to redact material on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations.

Paragraph 6.101 of the FOI Guidelines explains that:

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).

The material that I have decided is subject to conditional exemption can be described as:

- the network address for the OAIC's IT system; and
- a file note discussing various processes and the material subject to exemption in an FOI request.

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.

File note discussing material subject to exemption in an FOI request

One file note on the Resolve report for FOIREQ22/00211 contains notes taken during a meeting of different line areas of the OAIC, and details material within scope which for which consultation would be required, as well as the considerations in determining whether exemptions apply to that material under the FOI Act. In determining whether this material is exempt under section 47E(d), I have had regard to the administrative functions of the OAIC in processing FOI requests.

While FOIREQ22/00211 is now closed, the relevant material details some internal processes and considerations that did not impact on the final outcome of the matter. The release of this information may cause the issues to be reagitated after a matter has been finalised. It also describes material which was found to be exempt in that FOI Decision and contains consideration of the applicability of various exemptions to certain material. Again, this does not necessarily reflect the final decision made in that matter and the release of this material may create a misleading impression as to the decision ultimately released in that FOI request, and the reasons for this.

As a result, the release of this material may hinder the ability of the OAIC to consider and deliberate on various aspects of FOI requests openly and thoroughly if there is a risk of such information being released in a context which would create a misleading impression or reopen finalised issues.

For these reasons, I am of the view that disclosing the material in relation to the processing of an FOI request by the OAIC, would, or could reasonably be expected to substantially and adversely affect the proper and efficient conduct of the OAIC's function to process such requests. As such, I consider this material is conditionally exempt under s 47E(d) of the FOI Act.

OAIC Network Address

The OAIC collects and stores a range of personal and financial information about members of the public. The network address contains information about the OAIC's IT system (including the network location and user IDs).

In *'AW' and Australian Taxation Office (Freedom of information)* [2014] AICmr 1, the then FOI 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 are exempt under section 47E(d) of the FOI Act.

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 proper and efficient conduct of the OAIC's operations.

In my view, these adverse effects from the disclosure of the relevant documents at this time is more than merely an assumption and would impact upon the proper and efficient operations of the OAIC in maintaining the security of its computer systems which allow it to perform its various functions.

For the reasons given above, I have decided that the network address of the OAIC's IT system is conditionally exempt from disclosure under section 47E(d) of the FOI Act.

As section 47E is a conditional exemption, I am also required to consider the application of a public interest test. My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Personal privacy (section 47F)

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

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 have decided that 1 document within the scope of your request contains information which is conditionally exempt under section 47F of the FOI Act.

The FOI Guidelines at [6.131] discuss that what constitutes personal information will vary, depending on whether an individual can be identified or is reasonably identifiable in the circumstances. For particular information to be considered personal information, an individual must be identified or reasonably identifiable.

This document contains the full name of a staff member at the Independent Parliamentary Expenses Authority (IPEA).

I am satisfied that the information is personal information for the purpose of the FOI Act because the relevant individual can be identified from this information.

Because this information is personal information, I must also consider whether disclosure would be unreasonable, as set out in section 47F(2) of the FOI Act. 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 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 additional matters that are relevant.

The FOI Guidelines further describes key factors for determining whether disclosure is unreasonable at paragraph 6.142:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release.

Consistent with *FG and National Archives of Australia* [2015] AICmr 26, the FOI Guidelines at paragraph 6.143 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.

The decision of *Chief Executive Officer, Services Australia v Justin Warren* [2020] AATA 4557 discussed the issue of the disclosure of public servants' names and contact details which was also discussed in the FOI Guidelines and the Information Commissioner's 2020 Policy Paper Disclosure of public servants' names and contact details in response to FOI requests.

It is accepted that the position that the assessment of the redaction of staff names should be assessed on a case by case basis.

In consideration of these factors and the material contained within the documents, I am satisfied that the release of this personal information would be unreasonable due to the uniqueness of this person's surname, which would make them far more easily identifiable and contactable outside of official channels if their full name and employer was released to the public via the Right to Know website than may be the

case with other public servants. I have also had regard to the individual's submissions in support of this point

Further, this individual was not involved in the making of any decisions which form the subject matter of the request, and therefore I do not consider that disclosure of this information may advance the public interest in government transparency or provide you with any further insight into the processing of, or decision made in FOIREQ22/00211.

For the reasons given above, I consider that the relevant material in 1 document is conditionally exempt under section 47F of the FOI Act.

The public interest test (s 11A(5))

As provided above, I have considered that material within the documents is subject to conditional exemption under section 47E(d) of the FOI Act.

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 this case, I must consider whether disclosure of the documents at this time would be contrary to the public interest.

Subsection 11B(3) of the FOI Act provides a list of public interest factors favouring disclosure. The FOI Guidelines at paragraph 6.19 also provide a non-exhaustive list of public interest factors favouring disclosure, as well as public interest factors against disclosure. In my view, the relevant public interest factor in favour of disclosure in this case is that disclosure would promote the objects of the FOI Act in generally by informing the community of the Government's operations and enhancing the scrutiny of government decision making.

The public interest factors favouring disclosure must be balanced against any public interest factors against disclosure. The FOI Guidelines at paragraph 6.22 contain a non-exhaustive list of factors against disclosure. In my view, the following relevant public interest factors against disclosure in this case are that disclosure could reasonably be expected to:

- prejudice the OAIC's management functions; and
- prejudice the protection of an individual's right to privacy.

On balance, I consider that the factors against disclosure outweigh the factors in favour of disclosure. The information I have found to be conditionally exempt under section 47E(d) (being the OAIC's network address and a file note containing discussion of processes and exemptions in relation to FOIREQ22/00211) would do little to advance the objects of the FOI Act. While disclosure of any information related to decisions made by government can generally advance the objects of the FOI Act, the OAIC's network address does not provide any useful insight into the OAIC's operations or decision-making. The file note I have found to be exempt also does not provide any useful insight, but rather provides an impression of the reasons for a particular decision which is incomplete and not current.

I have therefore decided that it would be contrary to the public interest to give you access to the information that I have found to be conditionally exempt under section 47E(d) of the FOI Act.

The information I have found to be conditionally exempt under section 47F would also be of little value in advancing the objects of the FOI Act. The person in question was not involved in the creation of any documents subject to FOIREQ22/00211, and nor did they contribute to the decision made in that matter. Disclosure of their surname could however be reasonably be expected to prejudice their right to privacy due to the uniqueness of their name. I have therefore decided that it would be contrary to the public interest to give you access to the information that I have found to be conditionally exempt under section 47F of the FOI Act.

As stated above, the information that I have found to be conditionally exempt has been deleted (as noted in the schedule and the documents) and the remainder of the documents have been provided to you.

Conclusion

Please see the following page for information about your review rights and information about the OAIC's disclosure log.

Yours sincerely

Molly Cooke

Lawyer

4 January 2022

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI 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.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

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_10

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.

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 would be unreasonable to publish.

The documents I have decided to release to you contain business or personal information that would be unreasonable to publish. As a result, the documents will not be published on our disclosure log.