



OFFICIAL

## Freedom of Information (FOI) request

### Notice of Decision

Reference: FOI/2022/224

To BE

By email: [foi+request-9278-77cfbac5@righttoknow.org.au](mailto:foi+request-9278-77cfbac5@righttoknow.org.au)

Dear BE

I refer to your request of 16 August 2022 to the Department of the Prime Minister and Cabinet (the Department), for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

### Scope of request

You set out your request in the following terms:

*Pursuant to the Freedom of Information Act 1982 please provide documents produced by Professor Glyn Davis AC (or documents produced on his behalf) which contain and relate to his declaration of interests.*

### 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.

### Material taken into account

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to your request
- the FOI Act
- the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines)

## Document in scope of request

The Department has identified one document that falls within the scope of your request. The document is a declaration of interests submitted by the Secretary of the Department (Declaration).

## Decision

I have decided to refuse access on the grounds that the document identified within the scope of your request is subject to an exemption.

My decision is to exempt the document in full under section 47F of the FOI Act.

## Reason for decision

My findings of fact and reasons for deciding that certain information is exempt is set out below.

### 1. Section 47F –Public interest conditional exemption – personal privacy

Section 47F of the FOI Act provides:

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
  - (a) *the extent to which the information is well known;*
  - (b) *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;*
  - (c) *the availability of the information from publicly accessible sources;*
  - (d) *any other matters that the agency or Minister considers relevant.*

Personal Information has the same meaning as set out in section 6 of the *Privacy Act 1988* and is defined as:

*... 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.*

The Declaration contains the personal information in the form private, business and financial interests of the Secretary and his family.

The Secretary is a public figure and information about his career and background is in the public domain. The Declaration contains some information that falls within this category. However, this information is imbedded with other personal information in the Declaration, the majority of which is not well-known or publically available.

This information does not relate to usual performance of the Secretaries duties<sup>1</sup>. The Secretary's personal information is intertwined with that of another family member and it is not possible to separate his personal information.<sup>2</sup>

Furthermore, the information requested and provided in Declaration was done so on the understanding that this was on a confidential basis<sup>3</sup>.

Having regard to the above factors I am satisfied that releasing the Declaration would be an unreasonable disclosure of personal information.

I have decided to exempt the requested document under s 47F of the FOI Act.

## 2. Public interest

The FOI Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest<sup>4</sup>. In determining whether its disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors.

As I have decided the document is exempt under the conditional exemption of personal privacy I am now required to consider the public interest factors, in doing so I have not taken into account the irrelevant factors as set out in subsection 11B(4) of the FOI Act.

I have noted the objects of the FOI Act<sup>5</sup> and the factors favouring access as listed in subsection 11B(3) of the FOI Act. Having regard to the material before me and the circumstances of the documents found to be conditionally exempt I am satisfied of the following:

- access would promote the objects of the FOI Act<sup>6</sup>
- access may inform debate on a matter of public importance

The requested document does not provide you with access to your own personal information and therefore paragraph 11B(3)(d) is not a relevant factor.

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<sup>1</sup> 6.157 of the Guidelines

<sup>2</sup> 6.149 of the Guidelines

<sup>3</sup> 6.145 of the Guidelines

<sup>4</sup> s 11A(5) of the FOI Act

<sup>5</sup> s 3 of the FOI Act

<sup>6</sup> s 11B(3)(a) of the FOI Act

The FOI Act does not set out any public interest factors against disclosure and require that agencies are to have regard to the Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest<sup>7</sup>. The Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the documents found to be conditionally exempt, may weigh against disclosure.

I consider the following factor against disclosure of the Declaration:

- The disclosure could reasonably be expected to prejudice the protection of the right to privacy for the Secretary and his family. The fact that this information was provided and received on a confidential basis and is not in the public domain adds weight to this factor.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the requested document would be contrary to the public interest.

For these reasons, I have decided the material contained in the Declaration is exempt under section 47F.

### 3. Exempt or irrelevant matter

Section 22 of the FOI Act provides that exempt or irrelevant information may be deleted from a copy of a document, and access granted to such an amended copy where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

On 19 August 2022, the Department advised you of its policy to exclude the personal and direct contact details of officers not in the Senior Executive Service (SES) and any Ministerial staff, as well as any person's signature, and the mobile or direct numbers of SES officers, which are contained in documents that fall within the terms of an FOI request. This category of information is identified as irrelevant.

I am satisfied that the document contains material that is exempt as well material that would reasonably be regarded as irrelevant. Providing an edited version of the Declaration, where the number of deletions would be so many would be of little or no value, as the document would have little or no content or substance.<sup>8</sup>

Accordingly, I am satisfied that while parts of the document are irrelevant to your request it is not reasonably practicable to provide you with an edited document that does not contain exempt or irrelevant material. Therefore, I am satisfied that it is not reasonably practicable for the Department to prepare an edited copy of the document under section 22 of the FOI Act.

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<sup>7</sup> s 11B(5) of the FOI Act

<sup>8</sup> Paragraph 3.98 of the Guidelines

## Review rights

If you disagree with my decision, you may apply for internal review or Information Commissioner review of the decision.

### Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days from the date it is received.

Applications for review should be sent to [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

### Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter.

More information about Information Commissioner review is available [here](#).<sup>9</sup>

## 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 Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. More information about complaints is available [here](#).<sup>10</sup>

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

Yours sincerely



Debbie Arnold

Chief of Staff to the Secretary

Department of the Prime Minister and Cabinet

13 September 2022

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<sup>9</sup> <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review>

<sup>10</sup> <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint>