



## OFFICE OF THE PRIME MINISTER

FOI Reference: PM/22/008

To D

Email: [foi+request-9285-d12fab79@righttoknow.org.au](mailto:foi+request-9285-d12fab79@righttoknow.org.au)

Dear D

Thank you for your email dated 18 August 2022 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

### **Terms of FOI request**

You set out your FOI request in the following terms:

*I seek access to all correspondence, letters and emails from Mr Adam Bandt MP to the Prime Minister since 22 May 2022.*

*I also seek all correspondence, letters and emails from the Prime Minister to Mr Bandt since 22 May 2022.*

### **Authorised decision-maker**

I am authorised to make a decision in this matter on the Prime Minister's behalf.

### **Material taken into account**

In reaching my decision I had regard to:

- the terms of your request
- the Act
- the Guidelines issued by the Information Commissioner, under section 93A of the Act (Guidelines)

### **Documents in scope**

The Office has identified three (3) documents that fall within the terms of your request.

### **Decision**

I have decided to refuse access on grounds the documents are exempt under section 47G of the Act.

My findings of fact and the reasons for decision are set out below.

## **Reasons for decision**

### Public interest conditional exemption – business

Section 47G(1) of the Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
- (a) Would, or could reasonably be expected to, unreasonably affect that person adversely in respect of its lawful business, commercial or financial affairs; or*
  - (b) Could reasonably be expected to prejudice the future supply of information to the Commonwealth of an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

The correspondence between Adam Bandt MP and the Prime Minister relates to the professional and business affairs of Mr Bandt as the federal member for Melbourne and in his role as the leader of the Australian Greens. In this context, I find that the documents do have relevance to a person, being Mr Bandt in respect of his business and professional affairs, and to the business affairs of an organisation (the Australian Greens).

In considering if disclosure ‘would or could reasonably be expected’ to adversely affect the relevant person, I have had regard to Part 5 of the Guidelines which discuss the requirement to consider and analyse the likelihood or the reasonable expectation of the event, effect or damage. I have also consulted with the affected third party. It is reasonably expected that the disclosure of the documents would unreasonably impact the current and ongoing professional and business affairs of the person and organisation.

I am satisfied following consultation that this impact would cause an unreasonable adverse effect on Mr Bandt and his staff with respect to his professional affairs, and would also adversely impact the other members of the Australian Greens, including their staff, as well as the business affairs of the organisation. In reaching this decision I have had regard to the ability of members of parliament to correspond with the Prime Minister on a confidential basis and that this correspondence was prepared on grounds it would be treated confidentially.

I also note the Guidelines refer to a need to balance public and private interests in determining the unreasonableness of disclosure.<sup>1</sup> In considering this I have had regard to the availability of public information on the topic that is the subject of the communications.

Taking these matters into consideration, I am satisfied the release of information related to the professional and business affairs in this instance would be unreasonable. Accordingly, I am satisfied the documents are conditionally exempt under section 47G of the Act.

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<sup>1</sup> Paragraph 6.187 to 6.191 of the Guidelines

## Public interest test

The Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest.

In this context I must determine whether disclosure would be contrary to the public interest, and to balance the public interest factors. To this end I have not taken into account the irrelevant factors in section 11B(4) of the Act.

With respect to the factors that favour access I have had regard to the objects of the Act, set out in section 3, and factors listed in section 11B(3) of the Act. In particular:

- access would promote the objects of the Act
- access may potentially inform debate on a matter of public importance, although I do not consider this a significant factor having regard to the conditionally exempt material itself
- the documents do not offer insights into public expenditure
- the material does not contain your personal information.

With respect to the factors against disclosure I have had regard to the non-exhaustive list in the Guidelines, and in the circumstances, and similar to my conclusions as to unreasonableness, I find the following weighs against disclosure:

- disclosure could reasonably be expected to harm the interests of a professional or organisation with respect to their business affairs
- the communications occurred in a context where there was a reasonable expectation of confidentiality
- disclosure could reasonably be expected to impede the ability of non-government members of parliament to communicate frankly with the Prime Minister on sensitive matters.

I give the greatest weight to the ability for a professional and organisation to maintain their private interests with respect to their business affairs and ensure that all members of parliament are confident their sensitive communications are treated in confidence.

The documents are therefore exempt under section 47G of the Act.

## **Review rights**

If you disagree with the decision you may apply for an Information Commissioner review within 60 days from the date of this letter.

The Act does not provide for internal review of a decision by Minister.

More information about review rights and how to apply is available at:  
[www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review)

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Gory'.

Simona Gory  
Senior Legal Adviser  
17 October 2022