



Our reference: FOIREQ22/00356

Attention: Verity Pane

By Email: foi+request-9315-e8ea5c07@righttoknow.org.au

Your Freedom of Information Request – FOIREQ22/00356

Dear Verity Pane

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 30 October 2022.

In your request you seek access to the following:

“This is a separate FOI for copy of the 10 emails and attachments used as a scoping bundle in FOIREQ22/00253 described as being a total of 290 pages.

Personal details of third party private individuals and private businesses are out of scope.

For any practical refusal consultation I do not vary or withdraw my foi.”

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 10 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 6 documents 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 30 October 2022;
- the documents at issue;
- relevant case law;
- consultation with other Commonwealth agencies
- the FOI Act, in particular ss 3, 11, 11A, 15, 17, 22, 42, 47C, 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 irrelevant and 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.

Exempt material

I have determined that exemptions under the FOI Act apply to material in 6 documents. Accordingly, I have made edited copies of the documents (other than the document which I have found to be exempt in full) which removes the exempt material in accordance with section 22(1)(a)(i).

Irrelevant material

I have also identified the following material within 1 document to be irrelevant or out of scope of your request:

- material containing personal and business information of third parties.

Section 22 of the FOI Act authorises an agency to prepare, and to give an applicant access to, an edited copy of a document in specified circumstances. The specified circumstances are set out in s 22(1) and are, relevantly to this FOI request, as follows:

- the agency decides that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access (s 22(1)(a)(ii));
- the agency could prepare an edited copy which, with appropriate deletions, would not disclose any information that would reasonably be regarded as irrelevant to the request (s 22(1)(b)(ii));

- it is reasonably practicable for the agency to prepare the edited copy (s 22(1)(c)); and
- it is not apparent from the applicant's request, or consultation with the applicant, that the applicant would decline access to the edited copy (s 22(1)(d)).

It is possible, and reasonably practicable, for the OAIC to prepare edited copies of these particular documents by redacting the information which would reasonably be regarded as irrelevant to the request. Further, nothing in your FOI request suggests that you would decline access to edited copies of the documents.

Finally, I consider that giving access to these documents without the redactions applied 'would disclose information that would reasonably be regarded as irrelevant' to your request, based on the wording of your request in which you excluded '*Personal details of third party private individuals and private businesses*' from the scope of your request.

On this basis, I have edited the relevant page of the document to remove the irrelevant material in accordance with section 22(1)(a)(ii) and otherwise grant you access to the material in scope of your request.

Documents subject to legal professional privilege (section 42)

I have identified material contained within 3 documents which comprises of:

- legal advice and a request for legal advice in relation to the OAIC's powers under the *Privacy Act 1988* (Cth) (Privacy Act)
- discussion of legal advice received, and being sought, by Treasury in relation to the Consumer Data Right (CDR)

In accordance with section 42 of the FOI Act, I have made a decision to redact material on the basis that it is subject to legal professional privilege.

Consideration of privilege

Advice received by the OAIC

Section 42(1) of the FOI Act provides that:

A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

In determining whether or not the material contained in the 3 documents could be privileged from production in legal proceedings I have considered:

- whether there is a legal adviser-client relationship,
- whether the communication was for the purpose of giving or receiving, legal advice, or use in connection with actual or anticipated litigation,
- whether the advice given is independent, and
- whether the advice given is confidential.

Generally, privilege may be claimed in legal proceedings in relation to advice sought from and given by an inhouse lawyer, where the professional relationship between the lawyer and the agency seeking advice has the necessary quality of independence, as per *Taggart and Civil Aviation Safety Authority (Freedom of information)* [2016] AATA 327 at [32].

Having regard to this material, I am satisfied that there is a legal adviser - client relationship between the OAIC's legal services team and the OAIC's regulation and strategy branch.

The OAIC legal team is part of the corporate branch and is separate from the regulation and strategy branch which requested the legal advice. Requests for legal advice are settled by General Counsel or a principal lawyer within the legal team. Although not a determinative factor, all members of the legal team hold practising certificates and are subject to all professional obligations of legal practitioners.

I consider that the separation of the legal team from the regulation and strategy branch reinforces the independence of the legal advice and made the relationship a legal adviser – client relationship.

Whether privilege attaches to a document depends on the purpose for which the communication in the document was created. The High Court has confirmed that the common law requires a dominant purpose test rather than a sole purpose test, as per *Esso Australia Resources Ltd v Commissioner for Taxation* (1999) 201 CLR 49. The relevant document, being an email string containing a request for advice from the regulation and strategy branch, and advice in response from the legal team, was created for the dominant purpose of providing legal advice to the regulation and strategy branch in relation to the Department of Health's compliance with the Privacy Act.

Finally, I have turned my mind to whether the advice was given in confidence. In relation to the relevant documents, the legal advice was clearly marked as sensitive, and it was only distributed to a limited number of OAIC employees who were

involved in the matter. I have not been able to identify any express or implied waiver of the privilege and am satisfied that the advice was provided in confidence.

Advice received by the Treasury

Similarly, the material contained in 1 document which relates to the Treasury refers to legal advice being received, and further legal advice being sought, by the Australian Government Solicitor (AGS), which is a separate Commonwealth entity and legal service. I am therefore satisfied that there is a legal adviser - client relationship between the Treasury and AGS, and that the advice given is independent. While this material does not include a copy of the actual advice received by the Treasury, it was also created for the dominant purpose of receiving legal advice from the AGS, in accordance with paragraph 5.152 of the FOI Guidelines, which states that *'records made by officers of an agency summarising communications which are themselves privileged also attract the privilege.'*

I am also satisfied that this material is confidential. Although it has been shared with the ACCC and OAIC through being discussed in the CDR meeting, this is a limited disclosure which is consistent with the nature of the CDR, which is a cross-agency scheme. Further, the FOI Guidelines advise at paragraph 5.148 that *'If the document has been disclosed to a limited audience with a mutual interest in the contents of the document, it may not be inconsistent to continue to claim that the document is confidential and privileged'* and that *'a limited disclosure of the existence and the effect of legal advice could be consistent with maintaining confidentiality in the actual terms of the advice.'*

Waiver

Section 42(2) of the FOI Act provides that a document is not exempt under section 42(1) if 'the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim'. As such, I have also considered whether the privilege attached to the relevant documents has been waived. Waiver of privilege may be express or implied.

Generally, privilege claimed by the OAIC can only be explicitly waived by the General Counsel of the OAIC. I understand that this has not occurred.

I further understand that material contained within the documents relating to legal advice given by the OAIC's legal team has not otherwise been impliedly waived, by way of incidental disclosure outside of its intended audience.

In relation to the material concerning the Treasury, as discussed above regarding confidentiality, I do not consider that disclosure of the nature of the advice to other

concerned agencies constitutes a waiver and I am not aware of any other disclosure of this legal advice having occurred.

The 'real harm' test

The FOI Guidelines explain at [5.150] that while not stipulated in section 42 of the FOI Act, agencies should not claim exemption under section 42 unless it is considered that 'real harm' would result from releasing the document. At [5.150] the FOI Guidelines provide that:

The phrase 'real harm' distinguishes between substantial prejudice to the agency's affairs and mere irritation, embarrassment or inconvenience to the agency.

The material concerning the OAIC relates to advice on the OAIC's powers in relation to assessments under the Privacy Act, and contains discussion regarding strategy and planning for those assessments. I consider that disclosure of confidential communications of this nature to the wider public via the Right to Know website would substantially prejudice the OAIC's ability to effectively manage such assessments, satisfying the 'real harm' test.

The material concerning the Treasury describes advice received and further areas where advice is required regarding the powers of agencies under the CDR. This relates to ongoing matters and responsibilities under the CDR, and similarly I consider that disclosure of this to the wider public would substantially prejudice the ability of the Treasury, and of other agencies, to carry out their responsibilities under the CDR, satisfying the 'real harm' test.

For the reasons given above, I consider that the relevant material identified in the schedule is exempt under section 42 of the FOI Act.

As section 42 is not a conditional exemption, I am not required to consider the application of a public interest test.

Deliberative processes (section 47C)

Section 47C of the FOI Act provides for the exemption of deliberative matter as follows:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or*

consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth.*

Exceptions

- (2) Deliberative matter does not include either of the following:*
 - (a) operational information (see section 8A);*
 - (b) purely factual material.*

Paragraph [6.55] of the FOI Guidelines confirms that section 47C of the FOI Act is not a harm provision and that the only consideration is whether the document does or does not contain deliberative matter. As explained in the decision of *Parnell & Dreyfus and Attorney-General's Department* [2014] ALCmr 71 (30 July 2014) at [38], deliberative matter is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation'.

I have also considered FOI Guideline material provided at paragraphs [6.52] to [6.88], relevant AAT decisions including *Secretary, Dept of Prime Minister and Cabinet and Secretary, Dept of Infrastructure and Regional Development and Sanderson* [2015] AATA 361, and the recent Information Commissioner decisions of *Seven Network Operations Limited and Australian Human Rights Commission* [2021] ALCmr 66 (10 November 2021) which discuss the application of this conditional exemption provision.

In both decisions whilst the material itself was identified as deliberative, there was not sufficient evidence to prove that disclosure of the material would be contrary to the public interest, particularly in circumstances where a significant passage of time had passed since the material was the subject of active deliberation.

The material that I have decided is subject to this conditional exemption under section 47C comprises of:

- evaluation and discussion of the proposed next steps to implement the recommendations made by the Statutory Review into the CDR
- discussion of a report contained within CDR board meeting minutes

- a draft inquiry report into social media and online safety, and discussion and opinions on the draft report

I am satisfied that all of this material is deliberative matter for the purpose of section 47C of the FOI Act. This material consists of consultation, deliberation and opinions occurring in the process of the carrying out of functions by agencies. More particularly, this material records consultation and deliberation between various agencies regarding both the policy making and non-policy decision making functions of these agencies.

Although section 47C(2)(b) states that deliberative material does not include 'purely factual material,' the FOI Guidelines clarifies at paragraph 6.73 that it may not always be practical or possible to separate factual from deliberative material:

'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

The FOI Guidelines at paragraph 6.74 further provide that:

Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt.

While the material that I have considered to be exempt does include factual material, this material is so closely embedded and intertwined with the deliberative material that I do not consider it practical to separate the two and accordingly I have found the material as a whole to be exempt.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47C of the FOI Act.

As section 47C 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 exemptions in the documents, is discussed below.

Proper and efficient conduct of the operations of an agency (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 under section 47E(d) comprises of:

- Mobile phone numbers of OAIC staff members
- The name of a party to an Information Commissioner (IC) Review, and of a third party involved in that IC Review
- Surnames and contact details of staff members of the Department of Health and Attorney-General’s Department
- A Microsoft Teams meeting link used by the Treasury
- Material from the CDR board meeting minutes which contains discussions, updates and summaries concerning CDR policy, strategy and administration

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 agencies concerned, I have considered each agency’s functions in relation to the relevant material.

Staff names and contact details

5 documents contain the full names and/or direct contact details of staff from various agencies which I have found to be exempt.

The recent 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.

The Department of Health and Attorney-General's Department have submitted that the disclosure of staff names and contact details contained in this particular bundle of documents would have a substantial adverse effect on their operations for the following reasons as it would interfere with the established contact arrangements for those agencies. The staff members in question are members of teams within those agencies which do not directly communicate with members of the public, and those teams are not equipped to manage direct enquiries from the public.

The release of direct phone numbers, email addresses and surnames (which, by implication, provide direct email addresses) of staff members in these teams could be reasonably be expected to have a substantial adverse effect on the functions of these particular teams within these agencies by diverting resources away from the focus of these teams.

Similarly, the release of direct mobile phone numbers of OAIC staff members would circumvent the OAIC's established contact arrangements, whereby mobile numbers are not generally provided to the public. The release of this information to the public via Right to Know could also result in a high volume of unsolicited communications which would divert resources from the ordinary functions of the OAIC.

Names of parties involved in an Information Commissioner review

2 documents contain information that is not publicly known, being the names of parties involved in an IC review which has been determined by the OAIC. Based on the submissions of parties to this IC review, the OAIC decided to use pseudonyms to refer to the applicant and to a third party consulted, in publishing the decision in this IC review.

The release of this information at this time would, or could reasonably be expected to, adversely impact on the ability of the OAIC to manage future matters if parties cannot be confident that their information will be kept confidential when the OAIC has decided that it is appropriate to use pseudonyms in a decision.

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 in the confidentiality of the investigation process. In my view, the OAIC's ability to carry out its regulatory functions in conducting IC reviews would be substantially and adversely affected if the process for providing anonymity to parties where appropriate could be reversed by the OAIC later disclosing the names of parties in response to an FOI request.

As such, I consider the release of the names of parties involved in an IC Review that are not currently in the public domain would have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC.

Microsoft Teams meeting link

1 document contains a link to join Microsoft Teams meetings hosted by the Treasury. This is not a one-off meeting link but is a general link which could allow members of the public to join internal meetings hosted by the Treasury.

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.

Similarly, I consider that the disclosure of a meeting link which is reused by the Treasury could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the Treasury's operations. I have decided that this meeting link is conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Material contained in CDR board meeting minutes

I have also considered various material contained in 1 document to be conditionally exempt under section 47E(d). This material is contained in the CDR board meeting minutes attended by the OAIC, Treasury and ACCC, and consists of discussions and opinions regarding reports into the CDR, legal advice, and processes and strategies for implementing various policies, recommendations and cyber security plans.

In considering this material, I have had regard to the functions of all 3 agencies in administering the CDR scheme. All 3 agencies collaborate in managing this scheme, which involves the sharing of confidential information and carrying out discussions to inform and plan policy and procedures in managing the scheme. In particular, these discussions are essential to develop Ministerial advice as a precursor to submissions to Cabinet in relation to various proposals concerning the CDR. Release of this material may inhibit the full canvassing of issues in the development of Cabinet and policy material in the future, constituting a substantial adverse effect on the proper and efficient conduct of their operations.

Other discussions and reports within these minutes concern strategies for monitoring and enforcing compliance with the CDR scheme. Release of this information could be reasonably expected to have a substantial adverse effect on the agencies' function in administering and enforcing the CDR by providing organisations with insight into how they may circumvent the scheme or adjust their responses or information provided to the overseeing agencies.

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 is discussed below.

Personal privacy (s 47F)

In accordance with section 47F of the FOI Act, I have made a decision to redact material on the basis that disclosure would constitute an unreasonable disclosure of personal information.

A document is conditionally exempt under section 47F(1) of the FOI Act 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.

Section 4 of the FOI Act provides that the definition of personal information in the *Privacy Act 1988* (Cth) also applies to the FOI Act. The term personal information is defined in section 6 of the Privacy Act to be:

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

The material I have found to be conditionally exempt consists of:

- the names of parties involved in an IC review which has been determined by the OAIC
- discussion of the leave arrangements of staff members of the OAIC and Department of Health

I am satisfied that this material meets the definition of personal information because the material relates closely to the personal matters of individuals and disclosure of this information would reasonably identify those individuals.

In determining whether disclosure of other personal information in the documents would involve an unreasonable disclosure of personal information, the FOI Guidelines provide the following considerations at paragraph 6.140:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be associated with the matters in the document
- the availability of the information from publicly accessible sources
- any other matters the agency or Minister considers relevant.

The FOI Guidelines further describes the key factors for determining whether disclosure is unreasonable at paragraph 6.143:

- 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.

The FOI Guidelines explain at paragraph 6.138 that the test of 'unreasonableness' in section 47F 'implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

Inconsideration of these factors and the material contained within the documents, I am satisfied that the release of this personal information would be unreasonable because this information is not well known or available from publicly available sources.

Further, the information concerning staff leave does not relate to the matters discussed in the relevant documents and no public purpose would be achieved through its release.

I consider that the release of the names of parties involved in an IC review would cause stress on those parties given that a decision has already been made to publish this decision using pseudonyms.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47F of the FOI Act.

As section 47F is a conditional exemption, I am also required to consider the application of a public interest test.

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 47C, 47E(d) and 47F 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 relation to all material I have found to be conditionally exempt is that disclosure would promote the objects of the FOI Act in generally by informing the community of the Government's operations, revealing the reason for government decisions, and any relevant background or contextual information, 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 are:

- the disclosure of the material I have found to be conditionally exempt under section 47F could reasonably be expected to prejudice the protection of an individual's right to privacy

- the disclosure of the material I have found to be conditionally exempt under section 47C could reasonably be expected to prejudice the management functions of agencies, the ability to obtain similar information in future, and the ability of the government to effectively develop and consider policy proposals
- the disclosure of the material I have found to be conditionally exempt under section 47E(d) could reasonably be expected to prejudice the management functions of agencies, the ability of an agency to obtain confidential information, and to obtain similar information in future

If the material I have found to be conditionally exempt under section 47E(d) (such as the names of those involved in IC reviews, and information considered by the CDR board in administering the scheme) were to be released, I consider that there would be a substantial risk of similar information not being able to be obtained in future, due to relevant parties losing confidence in the confidentiality and discretion of these processes. This would diminish the ability of the OAIC and other agencies to continue to carry out these functions and effectively manage future matters.

Similarly, regarding the material I have found to be conditionally exempt under section 47C, I have given weight to the real risk that future deliberative processes, and the ability of agencies to reach decisions based on such processes, will be affected by the disclosure of the material. In accordance with the AAT's decision in *Secretary, Dept of Prime Minister and Cabinet and Secretary, Dept of Infrastructure and Regional Development and Sanderson* [2015] AATA 361, I have considered what the likely effect of disclosure would be at this point in time.

The material in question contains feedback and opinions from different agencies in relation to draft responses and policy items which have not yet been finalised for submission to relevant Ministers. Release of this material at this point in time could prejudice the ability of the government to reach a final, impartial decision on these matters. There is a strong public interest in a confidential relationship being maintained between different parts of government so as to allow for scope to explore and develop sensitive policy issues. The government requires an opportunity to consider the matters before it in making a decision, and I consider that release of material which relates to open policy items would disrupt this process through creating an incomplete or misleading impression of those items, which would in turn place pressure on decision makers to reach a conclusion prematurely or without having considered all relevant matters.

Regarding the information I have found to be conditionally exempt under section 47F, and some of the material I have found to be conditionally exempt under section 47E(d) (being the staff surnames and contact details and a Teams meeting link), this

information 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, this material does not provide any useful insight into the operations or decision-making by any agencies and I have accordingly given the factors favouring disclosure little weight regarding this material.

On balance, I consider that the factors against disclosure outweigh the factors in favour of disclosure. In this assessment I have had particular regard to the ability of agencies to the management functions of agencies and the ability of agencies to obtain information in the future.

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 sections 47C, 47E(d) and 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

I note that the documents contain multiple draft versions of privacy guidance concerning the COVIDSafe app. While I do not consider that an exemption applies to this material, please be aware that the final version of this guidance contains a number of differences to the guidance that has since been published and is available at [Privacy update on the COVIDSafe app - Home \(oaic.gov.au\)](https://www.oaic.gov.au/privacy/privacy-update-on-the-covid-safe-app). You may wish to refer to the published version.

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

Yours sincerely

Molly Cooke

Lawyer

23 December 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 will be published on the OAIC's disclosure log shortly after their release to you.