

**Our reference: FOI 161**

28 September 2022

Mr Peter Timmins

**Via email:** [foi+request-9321-30029d8c@righttoknow.org.au](mailto:foi+request-9321-30029d8c@righttoknow.org.au)

Dear Mr Timmins

**YOUR FREEDOM OF INFORMATION REQUEST: FOI 161**

I refer to the request for access to documents under the *Freedom of Information Act 1982* (FOI Act) you made on 29 August 2022. You have requested access to the following documents held by the National Archives of Australia (National Archives):

*“...all documents held that relate to the handling of my inquiry NAA1000339078 lodged on 11 February 2022.”*

**AUTHORITY AND RELEVANT MATERIALS**

I am authorised to make decisions under section 23(1) of the FOI Act.

In reaching my decision I referred to the following:

- the terms of your FOI request
- the documents relevant to the request
- the relevant provisions of the FOI Act
- the Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

**SUMMARY OF DECISION**

I have identified 21 documents, including attachments, which fall within the scope of your request.

Searches were undertaken according to normal business practices, I am satisfied that the National Archives has taken all reasonable steps to find documents falling within the scope of your request.

**DECISION ON ACCESS**

In summary, I have decided to grant you access to:

13 documents in **part** and

refused 8 documents in full.

The Schedule of Documents (**Attachment A**) sets out information regarding the exemption provisions that I have determined apply to the relevant documents.

## REASONS FOR DECISION

### **Section 22(1) – Access to edited copies with exempt or irrelevant matter deleted**

Section 22(1) of the FOI Act provides a process for access to a document with deletions removing exempt or irrelevant matter. I have assessed the information in the relevant documents and I am satisfied that some of the content is irrelevant to the scope of your request. Some of this information has been redacted from the documents to which part and refused access has been given.

### **Section 47C(1) – Public Interest conditional exemptions – deliberative processes**

Section 47C of the FOI Act provides that a document is conditionally exempt if disclosure of the document under the 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 an agency. Section 47C is a conditional exemption and is subject to the proper application of the public interest test (considered below).

In applying this exemption, paragraph 6.55 of the FOI Guidelines provides that:

*The deliberative processes exemption differs from other conditional exemptions in that no type of harm is required to result from disclosure. The only consideration is whether the document includes content of a specific type, namely deliberative matter.*

A number of the documents falling within the scope of the FOI request are deliberative in character. They comprise of opinions, advice, options and/or recommendations concerning the development of a decision on the terms of a proposed response to inquiry NAA1000339078.

I am satisfied that the relevant material is not purely factual and is deliberative matter within the meaning of section 47C(1), being in the nature of and relating to:

- opinion, advice and recommendations
- a collection of facts or opinions, including the pattern of facts or opinions considered; or
- interim decisions or deliberations.

The identified information constitutes the opinions and recommendations of the National Archives when considering options in relation to the development of a decision on the terms of a proposed response to inquiry NAA1000339078.

### **Section 47E(d) – Public Interest conditional exemptions – substantial adverse effect on the proper and efficient conduct of the operations of an agency**

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if disclosure of the document under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. Section 47E is a

conditional exemption and is subject to the proper application of the public interest test (considered below).

I have considered whether any of the information is conditionally exempt on the basis that disclosure would, or could reasonably be expected to, result in a substantial adverse effect on the proper and efficient conduct of the operations of the National Archives. The information I have conditionally exempted under this particular provision contains opinions and deliberations about the National Archives and its operations associated with processing your inquiry.

In reviewing the material, I have made the decision that disclosure of some of this information would, or could reasonably be expected to, have a substantial adverse effect on the National Archives. The information I have conditionally exempted under this particular provision contains opinions, deliberations and preliminary views about the processing your inquiry.

On that basis, I find that relevant parts of these documents are conditionally exempt under section 47E(d).

### **Section 47F(1) – Public interest conditional exemptions – personal privacy**

Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). Section 47F is a conditional exemption and is subject to the proper application of the public interest test (considered below).

Paragraph 6.127 of the FOI Guidelines provides:

*The FOI Act shares the same definition of 'personal information' as the Privacy Act, which regulates the handling of personal information about individuals. The cornerstone of the Privacy Act's privacy protection framework is the Australian Privacy Principles (APPs), a set of legally binding principles that apply to both Australian Government agencies and private sector organisations that are subject to the Act*

In this regard, personal information includes a person's name, address, telephone number and login and password details. Given this strict definition, all personal information regarding a person's name, email address, telephone and signatures has been conditionally exempted using this provision of the FOI Act.

The public interest test entails a public authority deciding whether, in relation to a request for information, it serves the interest of the public to disclose the information or to maintain an exemption in respect of the information requested. In balancing whether information should be excluded pursuant to section 47F(1) of the FOI Act, I have exercised my discretion to withhold personal information relating to people (including public servants) whose names and contact details are not currently held within the public domain.

### **Public Interest Test – section 11A(5) of the FOI Act**

Section 11A(5) of the FOI Act provides that when a document is conditionally exempt, the public interest test must be considered. I have applied the public interest test jointly across the conditional exemptions (outlined above) as it covers the similar material in the documents or the same factors as to why disclosure is not in the public interest apply across the documents.

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have considered relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- facilitate access to information by members of the public that allows them to be satisfied that proper processes have been followed by the National Archives.

I have identified the following factors as weighing against the release of the documents:

- Disclosure would be contrary to reasonably held expectations of confidentiality and internal assessment processes when providing opinions and advice to assist responsible National Archives officers.
- Whether documents were previously circulated in the public domain.
- Disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy including whether the personal information is that of a government employee in relation to personnel management and the disclosure of the information could be reasonably considered to reveal information about their private disposition or personal life.

Based on these factors, I have decided that the public interest in disclosing some information in the relevant documents is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

### CHARGES

Section 29 of the FOI Act authorises an agency or Minister to impose a charge for providing access to a document.

In this case, it has been decided that charges will not be imposed.

### DISCLOSURE LOG

The National Archives will update its Disclosure Log in accordance with its normal administrative practice.

### REVIEW RIGHTS

See **Attachment C** for more information about your rights to seek a review of this decision.

If you have any queries about this notice, please contact me in writing via [foi@naa.gov.au](mailto:foi@naa.gov.au).

Yours sincerely,



Raquel Lopera  
Authorised FOI Decision Maker

## ATTACHMENT A – SCHEDULE OF DOCUMENTS

Document Number	Page number	Document Date	Description	Access Decision
1	1-7	17 March 2022	<b>Email</b> Subject: FW: NAA1000336523 Redirected question Reference - general	<b>Partial Access</b> Exemptions Applied: Section 22- Irrelevant Material Section 47C- Deliberative Process Section 47E(d)- Certain Operations of an Agency Section 47F- Personal Privacy
2	8-15	31 March 2022	<b>Email</b> Subject: [EXT] FW: NAA1000336523 Redirected question Reference - general	<b>Partial Access</b> Exemptions Applied: Section 22- Irrelevant Material Section 47C- Deliberative Process Section 47E(d)- Certain Operations of an Agency Section 47F- Personal Privacy
3	16-18	16 February 2022	<b>Attachment to Document 2</b> Email Subject: [EXT] FW: NAA1000339078 Redirected question Reference - general	<b>Partial Access</b> Exemption Applied: Section 47F- Personal Privacy

4	19	28 April 2022	<p style="text-align: center;"><b>Email</b></p> <p style="text-align: center;">Subject: unauthorised destructions query follow up?</p>	<p style="text-align: center;"><b>Partial Access</b></p> <p style="text-align: center;">Exemption Applied:</p> <p style="text-align: center;">Section 22- Irrelevant Material</p> <p style="text-align: center;">Section 47C- Deliberative Process</p> <p style="text-align: center;">Section 47E(d)- Certain Operations of an Agency</p> <p style="text-align: center;">Section 47F- Personal Privacy</p>
5	20	1 April 2022	<p style="text-align: center;"><b>Attachment to Document 4</b></p> <p style="text-align: center;">Email</p> <p style="text-align: center;">Subject: PMs text messages ordered to be produced</p>	<p style="text-align: center;"><b>Partial Access</b></p> <p style="text-align: center;">Exemptions Applied:</p> <p style="text-align: center;">Section 22- Irrelevant Material</p> <p style="text-align: center;">Section 47C- Deliberative Process</p> <p style="text-align: center;">Section 47F- Personal Privacy</p>
6	21-26	16 February 2022	<p style="text-align: center;"><b>Attachment to Document 4</b></p> <p style="text-align: center;">Email</p> <p style="text-align: center;">Subject: RE: RE: first draft response NAA1000336523 Redirected question Reference - general</p>	<p style="text-align: center;"><b>Partial Access</b></p> <p style="text-align: center;">Exemptions Applied:</p> <p style="text-align: center;">Section 47C- Deliberative Process</p> <p style="text-align: center;">Section 47E(d)- Certain Operations of an Agency</p> <p style="text-align: center;">Section 47F- Personal Privacy</p>

7	27-30	15 February 2022	<b>Attachment to Document 4</b> Email Subject: RE:	<b>Partial Access</b> Exemptions Applied: Section 47C- Deliberative Process Section 47E(d)- Certain Operations of an Agency Section 47F- Personal Privacy
8	31	29 October 2020	<b>Attachment to Document 7</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
9	32	Undated	<b>Attachment to Document 8</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
10	33-35	24 April 2020	<b>Attachment to Document 8</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
11	36-37	5 March 2020	<b>Attachment to Document 7</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
12	38	28 February 2020	<b>Attachment to Document 11</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material

13	39	2 March 2020	<b>Attachment to Document 11</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
14	40	29 February 2020	<b>Attachment to Document 7</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
15	41-46	Undated	<b>Attachment to Document 7</b>	<b>Refused Access</b> Exemption Applied: Section 22- Irrelevant Material
16	47	12 May 2022	<b>Email</b> Subject: RE: unauthorised destructions query follow up?	<b>Partial Access</b> Exemption Applied: Section 47F- Personal Privacy
17	48-52	16 February 2022	<b>Email</b> Subject: RE: RE: first draft response NAA1000336523 Redirected question Reference - general	<b>Partial Access</b> Exemptions Applied: Section 47C- Deliberative Process Section 47E(d)- Certain Operations of an Agency Section 47F- Personal Privacy
18	53-54	21 March 2022	<b>Email</b> Subject: NAA1000339078 Redirected question Reference - general	<b>Partial Access</b> Exemption Applied: Section 47F- Personal Privacy



19	55-56	24 March 2022	<b>Email</b> Subject: NAA1000339078 Redirected question Reference - general	<b>Partial Access</b> Exemption Applied: Section 47F- Personal Privacy
20	57-58	3 May 2022	<b>Email</b> Subject: NAA1000339078 Redirected question Reference - general	<b>Partial Access</b> Exemption Applied: Section 47F- Personal Privacy
21	59-60	16 May 2022	<b>Email</b> Subject: NAA1000339078 Redirected question Reference - general	<b>Partial Access</b> Exemption Applied: Section 47F- Personal Privacy

## ATTACHMENT B – RELEVANT LEGISLATION

### 22 Access to edited copies with exempt or irrelevant matter deleted Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

### 47C Public interest conditional exemptions—deliberative processes

#### *General rule*

- (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.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

## 47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

## 47F Public interest conditional exemptions—personal privacy

### *General rule*

- (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.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

### *Access given to qualified person instead*

- (4) Subsection (5) applies if:
  - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
  - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
  - (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
  - (b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

**qualified person** means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

## **ATTACHMENT C – REVIEW RIGHTS**

### **Your rights to seek review of a decision made under the *Freedom of Information Act 1982***

If you do not agree with this decision, you may choose to exercise your review rights in the following ways:

- Request the National Archives of Australia to conduct an internal review of the decision. If you disagree with the National Archives of Australia's internal review decision, you may then apply to the Office of the Australian Information Commissioner (OAIC) for a review of that decision; or
- Apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of the decision. However, we do encourage you to seek internal review as a first step as it may provide a more rapid resolution for your concerns. If you are dissatisfied with the Information Commissioner's decision, you may apply to the Administrative Appeals Tribunal for a review of the Commissioner's decision.

### **INTERNAL REVIEW OF DECISION BY THE NATIONAL ARCHIVES**

Pursuant to section 54 of the FOI Act, you have the right to apply to the National Archives for an internal review of the decision. A different officer from the one who made the original decision will conduct the review. The reviewer will make a fresh decision.

If the decision has been made by the Director-General of the Archives, you do not have the option to request an internal review under the FOI Act. You will need to apply for a review of the decision by the Information Commissioner (see below).

You do not have to complete a special form in order to request an internal review. However, your application for an internal review must be made in writing, and lodged within 30 days after the day on which you are notified of the decision. It is desirable (but not essential) that you outline the reasons why you are dissatisfied with the decision in your application for internal review. There is no cost attached to an application for internal review.

An application for internal review should be directed to:

FOI Coordination Officer  
National Archives of Australia  
PO Box 4924  
Kingston ACT 2604  
Email: [foi@naa.gov.au](mailto:foi@naa.gov.au)

#### **REVIEW OF DECISION BY THE INFORMATION COMMISSIONER**

The Information Commissioner is an independent office holder who is authorised to review decisions of agencies and Ministers made under the FOI Act.

You do not have to request an internal review of a decision made under the FOI Act before making an application for review to the Information Commissioner (but you may do so if you wish).

There is no cost associated with making an application for review by the Information Commissioner.