



OFFICE OF THE PRIME MINISTER

FOI Reference: PM/22/010

To BE
Right to Know
Email: foi+request-9328-3d4a503b@righttoknow.org.au

Dear BE

Thank you for your email dated 30 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 (numbered for reference purposes):

1. *I seek communication between the Prime Minister's Office and Minister Burney's office in relation to the meeting and press conference attended by the Prime Minister, Minister Burney and Shaquille O'Neal on 27 August 2022 (Press Conference - Sydney | Prime Minister of Australia (pm.gov.au)).*
2. *I also seek access to all internal communication within the Prime Minister's office relating to the press conference or meeting referred to above between the period 14 August 2022 - 28 August 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 two documents that fall within the terms of part 1 of your request.

The Office has identified one document that falls within the terms of part 2 of your request.

A schedule of the documents is included as Attachment A.

Decision

I have decided to grant access in part to the documents subject to parts 1 and 2 of your request identified above, with redactions for irrelevant matter.

Staff names and related personal information have been redacted on the grounds that this information is reasonably regarded as irrelevant to the subject of your request under section 22 of the Act. Information not relevant to the scope of your request (i.e. not related to the meeting or press conference with Mr O'Neal) has also been redacted, as well as information that is not subject to the FOI Act because it does not fall within the meaning of 'official document of a Minister'.

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

Reasons for decision

Official documents of a Minister

I have considered the right of access under section 11(1)(b) of the FOI Act which extends to an 'official document of a Minister'. 'Official document of a Minister' is defined in section 4 of the FOI Act as follows (with emphasis added):

- *a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency...*

Accordingly, for a document to be an official document of a Minister and subject to the FOI Act it must:

- be in the possession of the Minister
- be held in their capacity as a Minister; and
- relate to the affairs of an agency.

"Agency" is defined to mean a Department, a prescribed authority or a Norfolk Island authority (s 4).

In this context, I note the examples set out in paragraph 2.50 of the Information Commissioner's FOI Guidelines that discuss documents held by a Minister but that do not relate to the affairs of an agency, in particular:

- personal documents of a minister or the minister's staff
- documents of a party political nature, and
- documents held in the minister's capacity as a local member of parliament not dealing with the minister's portfolio responsibility.

The meeting that took place between the Prime Minister and Mr Shaquille O'Neal was requested by Mr O'Neal and coordinated by the Prime Minister's electorate office. The Department of the Prime Minister and Cabinet was not involved in arranging the meeting and did not provide any briefings or assistance.

On this basis, I consider that documents and information of an administrative nature relating to the logistics of the meeting do not relate to the “affairs of an agency” within the meaning of s 4 of the Act. As such, they are not official documents of the Minister and the FOI Act does apply. These parts of the identified documents have been redacted.

However, there are parts of the documents that relate to the Uluru Statement of the Heart and the Voice to Parliament. I find that this information does relate to the affairs of an agency and is thus subject to release under the FOI Act.

Irrelevant information

Section 22 of the Act provides if giving access to a document would disclose information reasonably regarded as irrelevant and it is possible for the Minister to prepare an edited copy of the document, modified by deletions of the irrelevant matter, the Minister must prepare and disclose the edited copy of the document.

I am satisfied the personal information of staff is reasonably regarded as irrelevant to the subject of your request. This is because the personal information does not provide you with any information about the meeting or the press conference.

In reaching this view I have considered the Guidelines and find in the circumstances it is reasonable to regard personal information as irrelevant to your request.

I also regard information in the documents that is not related to the meeting with Mr O’Neal or the press conference as falling outside the scope of your request and thus irrelevant.

Other information

I note that the Prime Minister has made public information concerning the meeting with Mr O’Neal, including the nature of the meeting and how it came about. This information is available on the Prime Minister’s Media website.

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 FOI 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

Yours sincerely



Simona Gory
Senior Legal Adviser
29 September 2022



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Attachment A

Schedule of Documents

	Date	No. of pages	Description (document reference)	Decision on release	
1.	24 August 2022	8	Email plus attachment	In part	s 22
2.	24 August 2022	8	Email	In part	s 22
3.	15 August 2022	4	Email	In part	s 22