



**NDIS Quality
and Safeguards
Commission**

EC22-002124
LEX ID 1598

ATTACHMENT A

FOI Request No. (11) 22/23-1: Ace Chapman

FOI Decision

SCHEDULE OF DOCUMENTS

Doc No.	Pages	Date	Description	Decision	Exemption/s
1.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
2.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
3.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
4.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
5.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
6.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
7.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
8.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
9.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
10.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
11.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
12.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
13.	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)

Doc No.	Pages	Date	Description	Decision	Exemption/s
14	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
15	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
16	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
17	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
18	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
19	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
20	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
21	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
22	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
23	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
24	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
25	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
26	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
27	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
28	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
29	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
30	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
31	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
32	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
33	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)

Doc No.	Pages	Date	Description	Decision	Exemption/s
34	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
35	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
36	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)
37	Withheld	Withheld	NDIS Commission disclosure document	Access refused	section 47F (personal privacy)



ATTACHMENT B

FOI Request No. (11) 22/23-1: Ace Chapman

FOI Decision

STATEMENT OF REASONS

YOUR FOI REQUEST

On 28 September 2022, you requested access to the following documents:

[...] all SES conflict of interest registers held by the commission since it's opening on July 2018 until today.

Included in the scope of my request please include individual conflict of interest declarations or statements submitted by all SES officers whether ongoing or in their role on a temporary basis.

DECISION MAKER

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

My decision and reasons for decision are set out below.

DECISION

The Commission has identified thirty seven documents relating to your Freedom of Information (FOI) request. I have decided to **refuse access** to those thirty seven documents (**the documents at issue**). I have found that material in the documents at issue are exempt under section 47F (personal privacy) of the FOI Act.

I consider that disclosure of the documents would be, on balance, contrary to the public interest under section 11A(5). I also consider that it would be futile to grant you access to redacted copies of the documents under section 22 of the FOI Act, as the remaining material would convey little content or substance and therefore would be of little or no value.

MATERIAL ON WHICH MY FINDINGS ARE BASED

In reaching my decision, I have relied on the following material:

- the terms of your FOI request;
- the FOI Act;

- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
- relevant IC review decisions, in particular *Australian Federation of Air Pilots and Civil Aviation Safety Authority (Freedom of Information)* [2022] AICmr 65, *Paul Farrell and Department of Home Affairs (No 2) (Freedom of information)* [2018] AICmr 37, and *Ben Butler and Australian Prudential Regulation Authority (Freedom of information)* [2022] AICmr 34 (31 March 2022).

REASONS FOR DECISION

In coming to my decision on access relating to an FOI request I am required to:

- firstly, determine if any of the Public Interest Conditional Exemptions set out in Division 3, Part IV of the FOI Act apply to all or parts of the document (in which case it comes within the definition of a conditionally exempt document), and
- secondly, if it is determined to be a conditionally exempt document, consider the public interest for and against disclosure, having regards to the factors in section 11B of the FOI Act and any applicable guidelines issued by the Information Commissioner for this purpose.

Section 11A(5) requires that access to a conditionally exempt document must be granted unless (in the circumstances), on balance, granting such access would be contrary to the public interest.

Section 47F – Public interest conditional exemption – Personal privacy

Section 47F of the FOI Act relevantly 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 available sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*

“Personal information” is defined in section 4 of the FOI Act as having the same meaning as in the *Privacy Act 1988 (the Privacy Act)*. Section 6 of the Privacy Act defines personal information 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.”

I am satisfied that disclosure of the information caught within the scope of your request would be unreasonable, on the basis that:

- the personal information in conflict of interest declarations is not publicly available or well-known;
- the information was provided by individuals on the understanding that it would be kept confidential;
- the documents contain information of a sensitive nature including information of Commission officer's family members;
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the Act; and
- the relevant individuals and third party individuals have not consented to the disclosure of information relating to them.

In *Paul Farrell and Department of Home Affairs (No 2) (Freedom of information)* [2018] AICmr 37, former Australian Information Commissioner Timothy Pilgrim found that the disclosure of declarable associations of the former Secretary of the then Department of Immigration and Border Protection would involve an unreasonable disclosure of third party personal information. The Commissioner considered the circumstances in which the information was collected (as part of the Department's 'Integrity and Professional Standards' framework), the fact the FOI Act does not control or limit the use of the information, that the information was 'highly sensitive in nature, and is not available from publicly accessible sources', and that disclosure could reasonably be expected to cause detriment to the third parties to be relevant factors.

In *Ben Butler and Australian Prudential Regulation Authority (Freedom of information)* [2022] AICmr 34 (31 March 2022) Acting Freedom of Information Commissioner Elizabeth Hampton found that the disclosure of information detailing the current material personal interests of APRA's members and executive team would be an unreasonable disclosure of personal information. In balancing the public interest in disclosure of government held information and the private interest in the privacy of individuals, the Commissioner said:

In relation to whether disclosure might advance the public interest in government transparency and integrity, the applicant submits that there is an 'obvious importance of disclosure of conflicts of interest in public life'. While I accept that there is a public interest in transparency in conflict of interest disclosure processes, it does not appear reasonable to disclose the detailed, sensitive information contained in the documents, which includes information about the family members of APRA members and the executive. I accept APRA's submission that there are processes in place to manage and mitigate conflicts.

In *Australian Federation of Air Pilots and Civil Aviation Safety Authority (Freedom of Information)* [2022] AICmr 65, Freedom of Information Commissioner Leo Hardiman found that there was a public interest in providing information about conflicts of interest, however, advancing that public interest does not require the disclosure of either third party personal information or personal information of the employee which is contained in the employee's declarations. FOI Commissioner Hardiman found that disclosure of conflict of interest declarations would involve an unreasonable disclosure of personal information for the purposes of s 47F of the FOI Act.

Based on my consideration of the above information, I find that disclosure of the eight documents caught within the scope of your request would involve an unreasonable disclosure of personal information for the purposes of s 47F of the FOI Act.

Public interest test

As noted above, section 11A(5) of the FOI Act requires access to a conditionally exempt document to be granted unless in the circumstances access to the document at that particular time would, on balance, be contrary to the public interest.

For the reasons discussed above, I have found that the documents contain information which is conditionally exempt under section 47F of the FOI Act.

In applying the public interest test, I am required to have regard to the FOI Guidelines and the following factors listed in section 11B(3) of the FOI Act, which relate to whether the granting of access would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

The following irrelevant factors (set out in subsection 11B(4)) must not be taken into account in deciding whether access would be contrary to the public interest:

- access to the document could result in embarrassment to the Commonwealth Government or Norfolk Island, or cause a loss of confidence in the Commonwealth Government or Norfolk Island;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- the author of the document was (or is) of high seniority in the agency to which the FOI request was made; and
- access to the document could result in confusion or unnecessary debate.

In this case, I accept the following public interest factors favour disclosure:

- promoting the objects of the FOI Act by enhancing accountability and transparency, and increasing scrutiny and discussion of Commission activities.

However, I consider that this factor is outweighed by the following public interest factors against disclosure:

- prejudice to the protection of an individual's right to privacy;
- prejudice to third parties that are unlikely aware that their personal information has been provided to the Commission for that purpose or that it may be subject to public exposure;
- personal information was provided in the declarations on the understanding that it would be handled in-confidence; and
- prejudice to the Commission's ability to obtain similar information, including confidential or sensitive information, in the future.

I give the factors against disclosure greater weight than those factors favouring disclosure. I am satisfied that disclosure of the conditionally exempt information in the documents would, on balance, be contrary to the public interest.

I therefore decide that access to the material should be wholly refused.

DELETION OF EXEMPT OR IRRELEVANT MATERIAL

Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of a request.

In relation to section 22 of the FOI Act, the FOI Guidelines explain, at paragraph 3.98:

Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

I consider that, under section 22, redacting the information due to the conditional exemptions discussed above, the documents retain no value or meaning. It would therefore be futile to grant you access to redacted copies of the documents.



Andrew Corradin
A/Assistant Commissioner, Legal and Integrity
Legal Services and Internal Integrity Division
3 November 2022