



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

FOI reference: 23-070

Blue Mangoes

By Email: [foi+request-9522-b7d5a210@righttoknow.org.au](mailto:foi+request-9522-b7d5a210@righttoknow.org.au)

Dear Blue Mangoes

#### **FOI 23-070 - NOTICE OF DECISION UNDER THE FREEDOM OF INFORMATION ACT 1982**

I refer to your request to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) received on 2 November 2022 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**).

You requested the following:

*“Freedom of Information request to Classification Board - Only for the 2018 movie LADIES IN BLACK, all Classification Documents relating to the systemic failure by the Classification Board to correctly provide the consumer advice NUDITY plus full Classification History that also includes why the Classification Board eventually corrected the inaccuracy of their original consumer advice.”*

I have interpreted the scope of your request to be for all documents containing the deliberations and Classification History specifically on the decision for the classification NUDITY regarding the 2018 film ‘LADIES IN BLACK’.

#### **Extension of Time**

On 8 November 2022, the Department commenced a consultation process pursuant to section 24AB of the FOI Act providing you with an opportunity to revise the scope of your request so that reasons for practical refusal were removed. On 16 November 2022, you agreed to revise your request in favour of a scope that adequately removed reasons for practical refusal.

As was advised to you in the Department’s 8 November 2022 correspondence, the time taken to consult with you is not taken into account for the purposes of the timeframe for processing your request. Therefore, the new due date to provide you with a decision on access is 10 December 2022.

#### **Authority**

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the Department in accordance with subsection 23(1) of the FOI Act.

#### **Decision**

I have identified 11 documents falling in scope of your request.

As there are four or more documents a Schedule of Documents is at [Attachment A](#).

I have decided to:

- grant access to 2 documents in full; and
- grant access to 9 documents in part.

## Material considered

In making my decision, I had regard to:

- a. the terms of the request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
- e. officers within the department from the Classifications Board.

## Reason for Decision

### Section 47F (Personal privacy)

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Paragraph 6.129 of the FOI Guidelines provides that personal information is:

- information about an identified individual or an individual who is reasonably identifiable
- says something about a person
- may be opinion
- may be true or untrue
- may be recorded in material form or not.

The documents listed as partially exempt under this provision in the schedule of documents contain information relating to non-SES level public servants' names and contact details, as well as the personal information of third parties, which is not otherwise publicly available.

Under section 47F(2) of the FOI Act, in determining whether the disclosure of the documents would involve unreasonable disclosure of personal information, regard must be had to:

- 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; and
- d. any other matters that the agency considers relevant.

Guidance issued by the OAIC states that:


*A public servant's name, and information about where they work and how they can be contacted, is personal information. It is information about an identified individual, or an individual who is reasonably identifiable (see section 6 of the Privacy Act 1988).*

Against these criteria, I consider that:

- a. it is apparent from the information that an individual is identifiable; and
- b. the information referred to above is not readily available from publicly accessible sources.

I have also had regard to the key factors for determining whether disclosure is unreasonable, in line with Paragraph 6.142 of the FOI Guidelines and I am of the view that:

- a. Documents 1 to 3, 5 to 9 and 11 contain personal information of non-SES level public servants and third parties;
- b. release of the relevant material in Documents 1 to 3, 5 to 9 and 11 would cause stress on the relevant non-SES level public servants and third parties, as there would be a reasonable expectation that these details could be subject to misuse; and
- c. no public purpose would be achieved through release.



With reference to the assessments above, I have decided that the release of the information in the documents listed would be considered unreasonable disclosure of personal information, and is, therefore, conditionally exempt under section 47F of the FOI Act. My considerations of the public interest test are set out below.

#### *Application of the public interest test*

Subsection 11A(5) of the FOI Act provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

I considered the factors which favour disclosure and I believe that disclosure would promote the objects of the FOI Act, allow a person to access their personal information and may assist to inform debate on a matter of public importance. However, I do not consider that the redacted information would provide oversight of public expenditure.

I also considered the following factors which do not favour disclosure:

- disclosure of the information would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release;
- disclosure of the information would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act;
- disclosure of the information would not inform any debate on a matter of public importance or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47F of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to affect an individual's right to privacy by having their personal information in the public domain.

In summary, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you. Accordingly, I have decided that the relevant information in the listed documents is exempt under section 47F of the FOI Act.

#### **Your Review Rights**

Information regarding your review rights is set out in **ATTACHMENT B**.

#### **Additional Information**

Please note that Document 10 is a screenshot of the amended Classification Matrix following a submitted complaint. The Classification of Nudity was initially marked as 'None', however was then altered to 'G' to reflect the amended decision. Similarly, Document 11 displays the date and time the Classification amendment was made, i.e., when the document was unlocked to do so.

Should you have any enquiries concerning this matter, please do not hesitate to contact the FOI Team on [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

A handwritten signature in black ink that reads "Fiona Jolly". The signature is written in a cursive style with a large initial 'F'.

Fiona Jolly  
Authorised Decision Maker  
Director, Classification Board

2 December 2022

## Schedule of Documents – FOI 23-070

Document No.	Document description or title	Date	Decision	Exemptions
1	Decision Report: LADIES IN BLACK	11 July 2018	Partial access	s47F
2	Classification Certificate: LADIES IN BLACK	11 July 2018	Partial access	s47F
3	Application for Classification of a Film for Public Exhibition: LADIES IN BLACK	09 July 2018	Partial access	s47F
4	Synopsis: LADIES IN BLACK	Not dated	Full access	
5	Classifier Blues 1: LADIES IN BLACK	11 July 2018	Partial access	s47F
6	Classifier Blues 2: LADIES IN BLACK	11 July 2018	Partial access	s47F
7	Classifier Blues 3: LADIES IN BLACK	11 July 2018	Partial access	s47F
8	Email: COB Enquiry Response	27 November 2018	Partial access	s47F
9	Email: Ladies in Black – URGENT – purchase	25 June 2019	Partial access	s47F
10	Classification Matrix: LADIES IN BLACK (Amended)	11 July 2018	Full access	
11	Date/Time of Classification Matrix amendment: LADIES IN BLACK	26 July 2019	Partial access	s47F

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at [www.oaic.gov.au/freedom-of-information/reviews-and-complaints/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).