



Australian Government

Department of Finance

Reference: FOI 22/112
Contact: FOI Team
E-mail: foi@finance.gov.au

Oliver Smith
Right to Know

By email only: foi+request-9590-b387a919@righttoknow.org.au

Dear Mr Smith,

Freedom of Information Request – FOI 22/112

On 21 November 2022, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following:

I am seeking access to the government-provided official car service (ComCar) records for the Minister for Immigration, Citizenship and Multicultural Affairs for the period 1 September 2022 to 20 November 2022.

Can this drop off and pick up information please be provided to the street level, and if not, the suburb level.

To avoid any privacy issues, please redact the minister's home address fully where it appears. These occurrences can be noted as 'home', and redact the street number of all pick up and drop off addresses.

The purpose of this letter is to provide you with notice of my decision under the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance to grant or refuse access to documents.

Produced a document

I have decided under section 17 of the FOI Act to produce a document that contains the information you have requested, as the information did not exist in a discrete written form.

Decision

I have produced one document that contains the information that falls within the scope of your request, and have decided to release that document to you, with certain information redacted under section 47F of the FOI Act.

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the document that was produced;
- third party consultation;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Personal privacy – section 47F

Section 47F of the FOI Act provides that:

- (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).

The purpose of this exemption is to prevent the unreasonable invasion of third parties' personal privacy.

Personal information

Consistent with section 4 of the FOI Act and section 6 of the *Privacy Act 1988*, personal information means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual who is reasonably identifiable.

The document contains street addresses of a number of locations that the Minister for Immigration, Citizenship and Multicultural Affairs, the Hon Andrew Giles MP (the Minister) attended during the requested period.

I am satisfied that locations that the Minister travelled to is personal information about the Minister.

Unreasonable disclosure

Section 47F of the FOI Act further provides:

- (2) In determining whether the disclosure of a 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.

The FOI Guidelines provide:

6.142 Key factors for determining whether disclosure is unreasonable include:

- (a) the author of the document is identifiable
- (b) the documents contain third party personal information
- (c) release of the documents would cause stress on the third party
- (d) no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of 'FG' and National Archives of Australia [2015] AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

COMCAR provides car-with-driver services to parliamentarians when undertaking parliamentary business, and to Ministers (including parliamentary secretaries) and shadow ministers for their personal safety when their private plated vehicle or private vehicle could not reasonably be used.

I consider that as the personal information relates to the Minister's travel, which was publicly funded, it would not be unreasonable to release the majority of the information contained in the document.

I consider that it would be unreasonable to release the following information:

- the Minister's home addresses;
- all private residential addresses;
- the Minister's accommodation while travelling; and
- certain particulars of flight details and locations.

The Independent Parliamentary Expenses Authority (IPEA) publishes quarterly reports on the spending of parliamentarians. This public report provides transparency which contributes to ensuring public resources are used for the dominant purpose of parliamentary business.

I am satisfied that the information contained in the document is not well known. Although the information reported in a parliamentarians quarterly IPEA Expenditure Report details the COMCAR trips taken within the quarter, this information is limited to the area, date and cost of the trip. It does not list the details sought within this FOI request, which includes pick up and drop off street addresses.

I consider that disclosure of the Minister's private residential address or where he stays while travelling may cause security issues and enable his whereabouts to be traced. Further this applies to certain particulars of flight details and certain locations.

I consider that releasing private street addresses could reasonably be expected to cause distress to the occupants/owners, as this may result in unwanted incursion into their private life.

For the reasons mention above, I consider that it would be unreasonable to disclose the Minister's home address, the address of residential address, religious locations, and accommodation details of where the Minister stays while travelling. Accordingly, I consider this information is conditionally exempt under section 47F of the FOI Act.

Public interest test

Having formed the view that the document is conditionally exempt, I am now required to consider the public interest test for the purposes of determining whether access to this conditionally exempt document would, on balance, be contrary to the public interest.

Section 11A of the FOI Act provides:

(5) The agency or Minister 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 at that time would, on balance, be contrary to the public interest.

Factors favouring disclosure

Section 11B of the FOI Act provides:

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (c) allow a person to access his or her own personal information.

The FOI Guidelines provide a non-exhaustive list of factors that may favour disclosure.

The factors favouring disclosure in this case include that it would promote the objections of the FOI Act and further promote transparency over public expenditure as COMCAR travel is public funded. I attribute minimal weight to these factors as the COMCAR trips, date and costs have already been publicly disclosed.

Factors against disclosure

The FOI Act does not list any factors weighing against disclosure that are required to be considered.

The FOI Guidelines provide a non-exhaustive list of factors against disclosure, of which I consider that the release of the documents could reasonably be expected to:

- prejudice the protection of an individual's right to privacy
- harm the interests of an individual or group of individuals.

I attribute significant weight to the factors against disclosure because of the reasonably held expectations of parliamentarians that their home address, residential addresses that they attend, and that their security would not be put at risk by releasing their whereabouts or certain particular details regarding flights and locations that could impact the security of the Minister or the location visited.

Irrelevant factors

Section 11B of the FOI Act provides:

(4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

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

I have not considered the above irrelevant factors.

Balancing public interest factors

The FOI Guidelines provide:

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts of the matter at the time the decision is made.

I consider that disclosure would promote the objects of the FOI Act and promote transparency of public expenditure. However, I place greater weight on protecting against the detriment that disclosure may cause to the Minister and the other individual/s and location to whom the information relates.

As such, I consider that the release of the conditionally exempt information, on balance, would be contrary to the public interest.

Exempt information removed from the document

I have redacted exempt information from the document and released the edited form of the document to you.

Charges

I have decided that a charge is not payable in this matter.

Third party consultation

Finance consulted with the Minister and provided him with a copy of the document with our proposed redactions. We did not receive any objections to the release of the document with the personal information redacted.

Review and appeal rights

You are entitled to request an internal review or a review by the Office of the Australian Information Commissioner of my decision. The process for review and appeal rights is set out at **Attachment A**.

Publication

Finance will publish the document released to you on our [Disclosure Log](#). Finance's policy is to publish the document the next working day after it is released to you.

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,



Amy Lambart
A/g Assistant Secretary
COMCAR and Programs | Ministerial & Parliamentary
Department of Finance
20 January 2023



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 12 October 2022 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.