



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI-2023-023

To H

Email: foi+request-9803-36e38353@righttoknow.org.au

Dear H

I refer to your request to the Department of the Prime Minister and Cabinet (the Department), under the *Freedom of Information Act 1982* (the FOI Act), received on 19 January 2023.

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

Scope of request

You set out your request in the following terms:

I request access to all documents relating to the transcript of the PM's interview with Ben Fordham published by the Department and available on the website:

<https://www.pm.gov.au/media/radio-interview-2gb-ben-fordham-live>

I do not seek copies of the final transcript as published. I seek copies of drafts of the transcript and any emails, whatsapps, messages or other correspondence/communication (regardless of platform) within PMC and between PMC and PMO in relation to the transcript. My request is for documents created or received on 18 or 19 January 2023.

I also seek any correspondence or communication in relation to the transcript between PMC and third parties between the publishing of the transcript and today (being 19 January 2023). This would include any responses provided to media about the transcript.

...

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Material taken into account

In reaching my decision I referred to the following:

- the terms of your request
- searches undertaken by the Department
- the documents relevant to your request
- the FOI Act
- the Guidelines issued by the Information Commissioner¹ (the FOI Guidelines)

Documents in scope of request

The Department has identified two (2) documents that fall within the scope of your request.

These documents are set out in the Schedule of Documents at **Attachment A**.

Decision

I have decided to grant access in part, with exempt and irrelevant material deleted, on the basis that the documents contain information exempt under:

- Section 47F

Reason for decision

My findings of fact and reasons for deciding that certain information is exempt or irrelevant is set out below.

1. Section 47F - Public interest conditional exemption - Personal privacy

Subsection 47F(1) of the FOI Act provides:

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).

Personal information has the same meaning as set out in section 6 of the *Privacy Act 1988* and is defined as:

¹ s 93A of the FOI Act

... 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.

Subsection 47F(2) of the FOI Act provides:

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.*

I have examined the documents and I am satisfied that the documents contain personal information of a third party in the form of their name, position, employer and signature block. In my view, no public purpose would be achieved through release of this personal information². I am satisfied that the disclosure of this material would be an unreasonable disclosure of personal information. As such, this material is conditionally exempt under subsection 47F(1) of the FOI Act.

I have considered public interest factors below.

2. Public interest

The FOI Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest³. In determining whether its disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors.

As I have decided that material is conditionally exempt, I am now required to consider the public interest factors. In doing so I have not taken into account the irrelevant factors as set out in subsection 11B(4) of the FOI Act, which includes:

² 6.144 of the Guidelines

³ s 11A(5) of the FOI Act

- a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in 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 documents 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*

In applying the public interest test I have noted the objects of the FOI Act⁴ and the factors favouring access as listed in subsection 11B(3) of the FOI Act. Having regard to the material before me and the circumstances of the content within the documents found to be conditionally exempt I am satisfied of the following:

- access would promote the objects of the FOI Act⁵
- the conditionally exempt part of the documents does not seem to have the character of public importance, rather the matter has very limited scope and may only be of interest to a narrow section of the public
- the release of the conditionally exempt personal information within the documents does not offer any insights into public expenditure
- I am satisfied that your personal information is not contained within the conditionally exempt documents and therefore paragraph 11B(3)(d) is not a relevant factor to favour access

The FOI Act does not set out any public interest factors against disclosure and require that agencies are to have regard to the Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest⁶. The Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the documents found to be conditionally exempt, may weigh against disclosure.

The main factor against disclosure in this case is that disclosure of the information could reasonably be expected to prejudice the protection of third parties' right to privacy.

The disclosure of this limited amount of personal information would not bring further clarity to the documents in question and not materially promote the objects of the FOI Act.

⁴ s 3 of the FOI Act

⁵ s 11B(3)(a) of the FOI Act

⁶ s 11B(5) of the FOI Act

Accordingly, I am satisfied the public interest factors against disclosure outweigh the factors for disclosure and that the disclosure of the conditionally exempt material under subsection 47F(1) of the FOI Act would be contrary to the public interest.

3. Deletion of irrelevant matter

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would be reasonably regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonable be regarded as irrelevant to the request.

On 20 January 2023, the Department advised you of its policy to exclude the personal and direct contact details of officers not in the Senior Executive Service (SES) and any Ministerial staff, as well as any person's signature, and the mobile or direct numbers of SES officers, which are contained in documents that fall within the terms of an FOI request. This category of information is identified as irrelevant and documents can be modified by the Department to delete the irrelevant material.

Accordingly I am satisfied that parts of the documents are irrelevant under section 22(1)(a)(ii) of the FOI Act. The remainder of the document has been released to you as it is relevant to your request.

Review rights

If you disagree with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days from the date it is received.

Applications for review should be sent to foi@pmc.gov.au.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter.

More information about Information Commissioner review is available [here](#).⁷

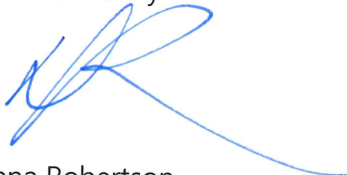
⁷ <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review>

FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. More information about complaints is available [here](#).⁸

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at foi@pmc.gov.au.

Yours sincerely



Dana Robertson
Assistant Secretary
Communications Branch
Department of the Prime Minister and Cabinet

18 February 2023

⁸ <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint>