



OFFICE OF THE PRIME MINISTER

FOI Reference: PM/23/005

To H

By email: foi+request-9804-8c311da4@righttoknow.org.au

Dear H

Thank you for your email dated 19 January 2023 regarding a request to access documents under the *Freedom of Information Act 1982* (the FOI Act).

Terms of FOI request

You set out your FOI request in the following terms:

I request access to all documents relating to the transcript of the PM's interview with Ben Fordham on 18 January 2023.

The published version of the transcript is available online at:

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

I seek copies of any drafts of the transcript and any emails, whatsapps, messages or other correspondence/communication (regardless of platform) held by PMO in relation to the transcript or draft versions of 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 PMO 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.

To assist with your searches I note that the documents I am requesting are likely to be held in a range of different formats including (but not limited to) emails and messages eg whatsapp, signal, sms).

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 FOI Act
- the Guidelines issued by the Information Commissioner, under section 93A of the Act (Guidelines)

Documents in scope

The Office has identified one document that falls within the terms of your request, being an email communication between the Office and the Department of the Prime Minister and Cabinet.

Decision

I have decided to grant access, in part, to the document referred to above. I have decided to withhold / exempt parts of the document, namely third party personal information and staff names, under section 47F (personal privacy) and section 22 (irrelevant material) of the FOI Act.

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

Reasons for decision

Personal privacy

Personal information

Subsection 47F(1) provides that:

a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person

‘Personal information’ is defined to have the same meaning as in the *Privacy Act 1988* (Cth) and means information or opinion about an identified individual or an individual who is reasonably identifiable.

In this context, I find that the document you have requested contains the personal information of a third party who is reasonably identifiable.

Unreasonable disclosure

I have considered the matters in section 47F(2) of the Act to determine whether the disclosure of personal information would be unreasonable, including:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly accessible sources; and*
- *any other matters that the agency considers relevant.*

In considering 'other matters' I have had regard to the Guidelines which discuss a need to balance the public interest in disclosure of government-held information and that of the private interest in the privacy of individuals.

I am satisfied the relevant third party would reasonably expect their personal information would not be released without their express consent.

I am thus satisfied the requested document contains identified personal information that would be unreasonable to release, and thus the document is conditionally exempt to this extent under section 47F of the Act.

Public Interest considerations

Section 11A(5) of the Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest.

In balancing the public interest factors, I have not taken into account the irrelevant factors of section 11B(4) of the Act. With respect to the factors that favour access I have had regard to the objects of the Act, set out in section 3, and the factors listed in section 11B(3) of the Act. In particular I find:

- access would promote the objects of the Act
- the subject matter of the exempt material may inform debate on a matter of public importance
- the subject matter of the exempt material does not offer any insights into public expenditure
- the subject matter of the exempt material does not appear to allow you access to your own personal information

With respect to the factors against disclosure I have had regard to the non-exhaustive list in the Guidelines, including the impact of disclosure on the individual's right to privacy. In the circumstances, and for similar reasons to my findings in relation to unreasonableness, I find that it would be contrary to the public interest to give access to the conditionally exempt information at this time.

Irrelevant information

I have also decided to redact personal information of Ministerial and Department staff disclosed in some of the documents under s 22 of the Act.

Section 22 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 Ministerial and Department staff is reasonably regarded as irrelevant to the subject of your request. This is because the personal information of staff does not provide you with any information relevant to your request.

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

A handwritten signature in black ink, appearing to read 'S. Gory'.

Simona Gory
Senior Legal Adviser
20 February 2023