



OFFICE OF THE PRIME MINISTER

FOI Reference: PM/23/020

To Not Rex Patrick
Email: foi+request-9886-a2dfe905@righttoknow.org.au

Dear FOI applicant

Thank you for your email dated 2 February 2023 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms:

I am seeking all correspondence between the Prime Minister or his office and the Chief Minister of the Northern Territory which references 'Alice Springs', 'Marion Scrymgour' or 'Dorelle Anderson'.

The timeframe for this request is from 1 January 2023 to 2 February 2023.

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

Documents in scope

The Office has identified one (1) document that falls within the terms of your request.

Decision

I have decided to refuse access on grounds the document is exempt under section 47B of the Act.

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

Reasons for decision

Documents affecting Commonwealth-State relations

Section 47B(b) of the Act provides:

A document is conditionally exempt if disclosure of the document under this Act:

...

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth

Section 4(1) of the Act provides the term State includes the Northern Territory.

The correspondence from the Chief Minister to Prime Minister was communicated in confidence. The guidelines discuss the extent to which this exemption applies, being that it is communication by a State to the Commonwealth and not the reverse.¹

Having regard to the circumstances of the communication, I am satisfied disclosure would divulge information communicated in confidence, by a State (defined to include a Territory), and find the document is conditionally exempt under section 47B of the Act.

Public interest test

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 this context I must determine whether disclosure would be contrary to the public interest, and to balance the public interest factors. To this end I have not taken into account the irrelevant factors in 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 factors listed in section 11B(3) of the Act. In particular:

- access would promote the objects of the Act
- access may potentially inform debate on a matter of public importance, and offer insight into public expenditure
- the material does not contain your personal information.

With respect to the factors against disclosure I have had regard to the non-exhaustive list in the Guidelines, and in the circumstances, I find the following weighs against disclosure:

- disclosure could reasonably be expected to harm the interests of a State, and, while not determinative, I also note that there is a legislative basis in another jurisdiction

¹ Paragraph 6.40

(section 45 of the Information Act 2002 [NT]) under which disclosure of this information is not in the public interest

- the communication occurred in a context where there was a reasonable expectation of confidentiality
- disclosure could reasonably be expected to impede the ability of a State to communicate frankly with the Prime Minister on sensitive matters.

I give the greatest weight to the assurance a State should have with the Commonwealth to ensure communications will be treated in confidence and sensitive material will not be divulged.

The document is therefore exempt under section 47B of the Act.

Review rights

If you disagree with the decision you may apply for Information Commissioner review within 60 days from the date of this letter. The Act does not provide for internal review of a decision by a 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



Simona Gory
Senior Legal Adviser
3 April 2023