



Australian Government

Department of Social Services

Our reference: FOI LEX 46543

Decision due date: 22 March 2023

Applicant name: John Smith

By email: foi+request-9893-2cfb6882@righttoknow.org.au

Dear John Smith,

Freedom of Information request LEX 46543

1. I refer to your email of 3 February 2023 to the Department of Social Services (**the Department**), in which you requested access to the following information under the *Freedom of Information Act 1982 (FOI Act)*:

‘...the declaration of interest form submitted by the current Senior Manager of Housing and Homelessness Policy. Personal information including their name should be redacted.’

2. The scope of your request is outlined at paragraphs 7 to 9 below.

Decision

3. The Department has undertaken a reasonable search of its records and has identified two (2) documents relevant to your request, listed in **Appendix 1**.
4. I have made the decision to **refuse access** to both documents subject to section 47F of the FOI Act.
5. The documents identified are set out in **Appendix 1**, together with applicable exemption provisions.

Authority to make decision

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

Background

7. On 3 February 2023, the Department received your FOI request for:

“the declaration of interest form submitted by the current Senior Manager of Housing and Homelessness Policy.”

8. On 14 February 2023, the Department emailed you advising that your request was invalid on the basis that the term “Senior Manager of Housing and Homelessness Policy” may refer to multiple employees within the Department. As such, the Department was not able to reasonably identify the documents sought. The Department provided you a link to its organisational chart to assist you to identify the person you may be referring to.



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9. On 20 February 2023, you clarified who the term “Senior Manager of Housing and Homelessness Policy” referred to. On that date, your request became a valid FOI request.
10. On 28 February 2023, the Department acknowledged receipt of your FOI request.

Material taken into account

11. When making my decision I considered the following:
 - a) the terms of your request; and
 - b) the content of the documents that fall within the scope of your request.
12. I also particularly considered the following provisions of the FOI Act:
 - a) section 3 (Objects - general) and section 3A (Objects - information or documents otherwise accessible), which outline the objects underpinning a person’s right of access under the FOI Act;
 - b) sections 11 (Right of access) and 11A (Access to documents on request), which provide for a legally enforceable right to access information held by the Government of the Commonwealth;
 - c) section 11B (Public interest exemption factors), to assess whether release of a conditionally exempt document was contrary to the public interest;
 - d) section 22 (Access to edited copies), which requires the release of exempt documents in an edited form in certain circumstances;
 - e) section 47F (Public interest conditional exemptions – personal privacy), which provides that a document is conditionally exempt in circumstances where disclosure would compromise personal privacy of a third party).
13. Full extracts of the provisions of the FOI Act I have relied on are in **Appendix 2**.
14. I have also had regard to the FOI Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.
15. A copy of the FOI Guidelines is accessible on the Office of the Australian Information Commissioner website at <http://www.oaic.gov.au/freedom-of-information/foi-guidelines>.

Reasons for decision

16. 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).
17. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Cth) (**Privacy Act**). Personal information is defined in section 6 of the Privacy Act as:

information or an opinion about an identified individual, or an individual who is reasonably identifiable:



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- (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.*
18. The elements of 'personal information' are:
 - (a) *it relates only to a natural person (not, for example, a company);*
 - (b) *it says something about the individual;*
 - (c) *it may be in the form of an opinion, it may be true or untrue, and it may form part of a database; and*
 - (d) *the individual's identity is known or is reasonably ascertainable using the information in the document.*
19. Both documents include the personal information of a third party, such as information about their personal life. As such, I consider the information in the documents is 'personal information'.
20. If information is personal information, it is conditionally exempt if disclosure would be 'unreasonable'.
21. In considering whether disclosure would be 'unreasonable', subsection 47F(2) of the FOI Act requires me to take into account:
 - (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 matter I consider relevant.*
22. The information in the documents is not well known and is not publically available information. Therefore, I consider disclosure of that information would be 'unreasonable'.
23. Accordingly, I have decided that the documents meet the criteria for conditional exemption.
24. However, where a document is assessed as conditionally exempt, access must be given unless access to the document would be contrary to the public interest in accordance with subsection 11A(5) of the FOI Act.

Application of the public interest test – section 47F

25. In determining whether both documents are conditionally exempt, I am required to consider whether it would be contrary to the public interest to give you access to conditionally exempt material at this time.
26. Subsection 11B(3) of the FOI Act provides a list of public interest factors favouring disclosure. The FOI Guidelines also provide a list of public interest factors favouring and opposing disclosure.
27. Paragraph 6.27 of the FOI Guidelines explain:



'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 in 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.'

28. In order to assess whether release of the exempt material would be contrary to the public interest, I considered all the factors listed in subsection 11B(3) of the FOI Act which favour disclosure:
 - a) disclosure would promote the objects of the FOI Act;
 - b) disclosure would inform debate on a matter of public importance;
 - c) promote effective oversight of public expenditure; and
 - d) disclosure would allow a person to access his or her personal information.
29. I considered the following factors set out in part 6 of the FOI Guidelines which do not favour disclosure:
 - a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy; and
 - b) the personal information is that of a government employee in relation to personnel management and the disclosure of the information could be reasonably considered to reveal information about their private disposition or personal life.
30. The Department is committed to complying with its obligations under the Privacy Act, which sets out standards and obligations that regulate how the Department must handle and manage personal information. I consider that it is firmly in the public interest that the Department uphold the rights of individuals to protect their own privacy. I consider that handling this information in a way that would be inconsistent with the Department's statutory obligations would be contrary to the public interest. This factor weighs strongly against disclosure.
31. I am not satisfied that disclosure of the documents would necessarily promote the objects of the FOI Act to any great extent, inform debate on a matter of public importance, promote effective oversight of public expenditure or provide you with access to your personal information.
32. I am satisfied that disclosure of the documents would reveal information about an employee's personal life and would interfere that individual's right to privacy.
33. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act in deciding whether access to the documents would, on balance, be contrary to the public interest.
34. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure in regards to the personal information contained within the documents. I am satisfied that the public interest is to withhold the exempt documents.



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35. Although I consider access to the personal information set out above is against the public interest, I am required by paragraph 22(2)(b) of the FOI Act to provide you access to an edited copy of the document, if it is possible and reasonably practicable to do so. My assessment of the criteria is detailed below.

Access to edited copies with exempt or irrelevant matter deleted (section 22)

36. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release; that is, a copy with relevant deletions made under section 22 of the FOI Act.
37. I have considered whether it is reasonably practicable to provide you with an edited copy of the documents, whilst ensuring that I do not disclose exempt material or information that I am not authorised to disclose.
38. I consider that it is not practicable, and accordingly, I have not provided an edited copy of the documents.

Your rights of review

39. Information about your rights to seek a review of this decision are at **Attachment A**.

Contact

40. Should you have any enquiries concerning this matter please do not hesitate to contact the FOI team by email at xxx@xxx.xxx.xx.

Yours sincerely,

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

Renee
Director (a/g)
FOI Section
Legal Services Group

10 March 2023



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Department of Social Services

Schedule of documents
FOI 46543

Document No.	Date	Description	Exemption Provision
1.	19/07/2021	2021-22 Financial Year Declaration of Interests Form	Access refused.
2.	3/07/2022	2022-23 Financial Year Declaration of Interests Form	Access refused.



Schedule of relevant provisions used in making this decision
FOI LEX 46543

Excerpts from the *Freedom of Information Act 1982 (Cth)*

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.



Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (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.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

11B Public interest exemptions — factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (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;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (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.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.



Requirements for request

- (2) The request must:
- (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
- (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the



scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.

- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:

- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
(aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
(c) give to the applicant appropriate information concerning:
(i) his or her rights with respect to review of the decision;
(ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
(iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).

- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

47F Public interest conditional exemptions—personal privacy

General rule

- (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).
- (2) 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.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information



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- concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
- (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
- (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:
- qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:*
- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

93A Guidelines

- (1) The Information Commissioner may, by instrument in writing, issue guidelines for the purposes of this Act.
- Note:* For variation and revocation of the instrument, see subsection 33(3) of the Acts Interpretation Act 1901 .
- (2) For the purposes of the performance of a function, or the exercise of a power, under this Act, regard must be had to any guidelines issued by the Information Commissioner under this section including, but not limited to, guidelines issued for the purposes of the following provisions:
- (a) paragraph 9A(b) (information publication scheme);
- (b) subsection 11B(5) (public interest factors);
- (c) subsection 15(5A) (decisions on requests).
- (3) Guidelines are not legislative instruments.