



OFFICIAL

Freedom of Information (FOI) request

Notice of Decision

Reference: FOI-2023-150

To MBV

Email: foi+request-9995-3ae51cea@righttoknow.org.au

Dear MBV

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 27 February 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:

Any emails, text messages, Signal messages, WhatsApp messages, Skype messages or records of conversations relating to the drafting of EC22-000270.

and

any emails, text messages, Signal messages, WhatsApp messages, Skype messages or records of conversations relating to the drafting of the responses to Budget October 2022-23 Estimates Questions on Notice QON0031 and QON0032 (QONs which relate to EC22-000270).

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
- the FOI Act

- the Guidelines issued by the Information Commissioner¹ (the FOI Guidelines)

Documents in scope of request

The Department has identified 19 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 47C (deliberative processes) of the FOI Act
- section 47F (personal privacy) of the FOI Act
- section 47E(d) (certain operations of agencies) of the FOI Act

Reason for decision

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

1. Section 47C - Public interest conditional exemption - deliberative processes

Section 47C(1) of the FOI Act provides that:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
- (a) an agency; or*
 - (b) a Minister; or*
 - (c) the Government of the Commonwealth.*

'Deliberative matter' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document.^[44] There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'².

Parts of document 8 and the whole of document 9 would disclose deliberative matters in the form of an opinion, advice or recommendation prepared for the purpose of developing advice to the Secretary of the Department in relation to the Code of Conduct for Ministers (the Code). Thus I am satisfied the material in the documents found to be exempt contains information that meets the definition of 'deliberative matter'.

¹ s 93A of the FOI Act

² Paragraph 6.63 of the FOI Guidelines

Accordingly, I have decided that the documents are conditionally exempt under section 47C of the FOI Act. I have considered the public interest factors below.

2. Section 47E(d) - Public interest conditional exemption - certain operations of agencies

Section 47E(d) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraphs 6.101 and 6.103 of the FOI Guidelines state:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material.

Having regard to the nature of the specific information, I am satisfied that portions of the documents contain information which, if disclosed, would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

The information consists of internal email addresses and phone numbers used by the Department which are not publicly available. I consider that the disclosure of these internal contacts would, or could reasonably be expected to, result in external communication and public inquiries being received which would compromise the day to day operations of the Department. This is because the teams that manages these internal contacts are not resourced to triage and manage public communications. I note that there are established channels of communication available for media and members of the public to contact government agencies.

Accordingly, I am satisfied that these parts of the documents are conditionally exempt under section 47E(d) of the FOI Act. I have considered the public interest factors below.

3. 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*.

I am satisfied that the documents contain the personal information of individuals in the form of their name and financial information, and that this is personal information for the purposes of subsection 47F(1) of the FOI Act.

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.*

The Guidelines issued by the Australian Information Commissioner note at paragraph 6.138 that “the test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government – held information and the private interest in the privacy of individuals”. The Guidelines also note that what is considered unreasonable requires a consideration of all the circumstances. The other key factors for determining whether disclosure is unreasonable include:

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

The exempt information identifies the family member of a Minister and refers to personal financial arrangements. The information is sensitive material that is not widely known or available from public sources.

Accordingly, I am satisfied that disclosure of the identified material would be an unreasonable disclosure of personal information, and the content is conditionally exempt under subsection 47F(1) of the FOI Act. I have considered public interest factors below.

4. 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

³ s 11A(5) of the FOI Act

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 parts of the documents are conditional 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 s 11B(4) of the FOI Act.

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

- access would promote the objects of the FOI Act⁵
- the matter may inform debate however relevant information on this subject has been previously released and is accessible on the Department website
- the subject matter does not offer any insights into public expenditure
- your personal information is not contained within the conditionally exempt documents

The FOI Act does not set out any public interest factors against disclosure and require that agencies are to have regard to the FOI Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest⁶. The FOI 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 for material conditionally exempt under section 47C in this case is that disclosure would affect the ability of the Department to conduct robust internal deliberations and discussions in developing comprehensive advice, on the basis that the level of detail contained in future internal correspondence and ministerial briefs may be diminished if there were a risk of such deliberations and discussions being publicly released.

The main factor against disclosure for material conditionally exempt under section 47E(d) is due to the effect of the Department's ability to manage its day to day operations if internal email accounts and phone numbers were made public, as it could result in potentially vexation communication and public enquiries being received, which these small teams within the Department are not resourced to manage.

Disclosure of the conditionally exempt information under section 47F could reasonably be expected to prejudice the protection of individuals' right to privacy.

⁴ s 3 of the FOI Act

⁵ s 11B(3)(a) of the FOI Act

⁶ s 11B(5) of the FOI Act

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the requested document would be contrary to the public interest.

5. 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 19 May 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.

Portions of the documents also contain material that does not fall within the scope of your request. That is, the information does not relate to the drafting of the letter dated 15 September 2022 (EC22-000270) or Senate Estimates Questions on Notice QON0031 and QON0032 (2022-23 October Budget Estimates).

Accordingly I am satisfied that parts of the document 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

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



Peter Rush
Acting First Assistant Secretary
Department of the Prime Minister and Cabinet
21 July 2023

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

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