



Australian Government

Australian Public Service Commission

Becky

By Email: foi+request-10558-c5e6d1cf@righttoknow.org.au

Our Reference: LEX 880 (621)

Dear Applicant

Freedom of Information request

1. The purpose of this correspondence is to advise you of a revised decision the Australian Public Service Commission (Commission) has made under section 55G of the *Freedom of Information Act 1982* (FOI Act) in relation to LEX 621.
2. My decision only applies in relation to the release of five (5) additional documents in full and one (1) document in part which were previously found to be exempt under sections 47E(d) and 47F of the FOI Act.
3. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Revised Decision

4. I have made a decision to vary the internal review decision made by Shyam Raghupathi, FOI decision maker, on 27 October 2023.
5. In varying this decision, I have decided to release documents 1, 2, 3, 6 and 7 to you in full and document 4 in part. The documents released to you in accordance with this revised decision are enclosed.
6. My decision only applies in relation to the documents identified above. This decision does not apply to, or affect, the balance of the internal review decision made on 27 October 2023.
7. The documents that I have chosen to grant access to are set out in Schedule 1 at **Attachment A**. As I have decided to grant access to one document in part, being document 4, I have produced an edited copy of this document, modified by deletions in accordance with section 22(2) of the FOI Act.

8. Document 4 has also been edited to remove material that is irrelevant to the scope of your request under section 22(1)(ii) of the FOI Act. This includes the description of two documents that were found to fall outside the scope of the request in LEX 521, with the applicant's agreement.

Authority to make decision

9. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.

Summary

10. On 12 August 2023, you requested access to the following:

"I request access to all freedom of information decisions made by officials in the Australian Public Service Commission between 1 January 2023 and 30 June 2023, inclusive."

11. On 17 August 2023, you agreed to re-scope the terms of your request to decision notices between 1 April 2023 to 30 June 2023.
12. On 30 August 2023, the Commission notified you of third party consultation which extended the due date to Friday 29 September 2023.
13. On 27 September 2023, I as Authorised Decision Maker, made a decision to release four documents in part and to refuse access to seven documents (the original decision).
14. On 28 September 2023, you sought an internal review of the original decision in respect of documents 1 – 7 only.
15. On 27 October 2023, you were provided with a decision relating to your internal review request which affirmed my earlier decision to refuse your request for access to documents 1 – 7 under sections 22, 47E and 47F of the FOI Act.
16. On 19 March 2024, the Office of the Australian Information Commissioner (OAIC) sent the Commission a notice under s 54Z of the FOI Act advising that the OAIC had commenced a review of the Commission's internal review decision. In seeking IC review we understand that you are only contesting the Commission's reasons for withholding access in full to documents 1, 2, 3, 4, 5, 6 and 7. It is our understanding that you are not contesting the redactions applied to documents 8, 9, 10 and 11. In your application, you stated:

"Mr Raghupathi's decision is incorrect.

Mr Raghupathi says that s 47E(d) of the FOI Act applies to documents 1 – 7. He also says that s 47F applies to documents 1 – 7. On that basis he says that it is against the public interest to release the documents.

..

Documents 1, 2, 3, 6 and 7 are, as I have learned, published online. Links to the documents are set out on Right to Know

https://www.righttoknow.org.au/request/foi_decisions_made_between_1_jan#comment-3210).

...

Document 4

The substance of the request in document 4 (LEX521) is published on the disclosure log of the APSC –

www.apsc.gov.au/freedominformation/disclosure-log.”

17. Following further consideration of this matter, and your submissions as made above including with respect to documents 1, 2, 3, 6 and 7, I have decided to release documents 1, 2, 3, 6 and 7 in full and document 4 in part. For this reason, the Commission has prepared this revised decision under section 55G of the FOI Act. As stated at paragraph six above, the Commission’s earlier decision in relation to the remainder of the documents stands.

18. The Commission will provide the OAIC with a copy of this revised decision.

Reasons for Decision

19. In making my revised decision on your request, I have had regard to:

- the terms of your request;
- the primary and internal review decisions;
- the terms of your application for IC review including the links to publically available information on the website Archive.com;
- the contents of the documents;
- the views of the relevant third parties;
- the FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

Section 47F- Personal Privacy

20. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.

21. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:

- the information or opinion is true or not; and
- the information or opinion is recorded in a material form or not.

22. I am satisfied that document 4 contains a limited amount of personal information, including a third party’s name and email address.

23. The FOI Guidelines at 6.138 say that the personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The FOI Guidelines at

6.142 say that the key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable;
- the documents contain third party personal information;
- release of the documents would cause stress on the third party; and
- no public purpose would be achieved through release.

24. This further requires consideration of all of the circumstances. The Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 AT [51] outlined:

‘...whether a disclosure is ‘unreasonable’ requires...a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...’

25. Taking these factors into account, I find that disclosure of the personal information contained within document 4 would be an unreasonable disclosure of personal information. I therefore find that parts of document 4 containing this personal information are conditionally exempt under s 47F of the FOI Act. In my view, release of this personal information would likely cause stress or detriment to the third party and it would represent an unreasonable invasion of their privacy. Further, it would serve no useful purpose.

26. However, in accordance with section 11(A)5 of the FOI Act, I must nevertheless give access to the conditionally exempt information unless in the circumstances it would be, on balance, contrary to the public interest to do so. My consideration of the public interest is below.

Public interest considerations

27. Where documents are conditionally exempt, section 11A(5) of the FOI Act provides that access must be given to them unless access at that time would, on balance, be contrary to the public interest.

28. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the document in full would promote the objects of the FOI Act and inform debate on a matter of public importance.

29. I have identified the following factors as weighing against disclosure:

- disclosure could reasonably be expected to prejudice the privacy of the third party; and
- disclosure of the third party individual’s personal information will not advance the scrutiny of the FOI decision falling within scope of your FOI request.

30. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.
31. On balance, I consider that disclosure of the conditionally exempt material in document 4 would be contrary to the public interest.

Application for Information Commissioner Review – Review Rights

32. The OAIC is currently conducting an IC review of the Commission's internal review decision to refuse access to the documents requested. Under section 55G(2)(b) of the FOI Act, the Information Commissioner (IC) must deal with your IC review application as if it were an IC review application of this Revised Decision.
33. The scope of your IC review emphasised that you are seeking access to documents 1 – 7. The effect of this decision is that you have now been provided with access to documents 1, 2, 3, 6 and 7 in full and document 4 in part (with very limited redactions). While I appreciate this decision may not have resolved your concerns regarding document 5, I consider that this revised decision represents a fair resolution to your application. I therefore kindly ask you to consider withdrawing your application for IC review with the OAIC.
34. You can contact the OAIC by email at foidr@oaic.gov.au or by phone on 1300 363 992 to advise whether you wish to proceed with your application.

Contacts

35. If you require clarification on matters in this letter please contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely,



Melanie McIntyre
Authorised FOI decision maker
31 May 2024

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Description	Exemptions
1	LEX 510 – Decision Notice (11/04/23)	Released in full
2	LEX 511 – Decision Notice (11/04/23)	Released in full
3	LEX 520 – Decision Notice (24/04/23)	Released in full
4	LEX 521 – Decision Notice (26/04/23)	Refuse in part - s 47F & 22
5	LEX 532 – Decision Notice (28/04/23)	<i>Decision unchanged -</i> Refuse in full - s 47E & 47F
6	LEX 547 – Decision Notice (23/05/23)	Released in full
7	LEX 550 – Decision Notice (26/05/23)	Released in full