

Our ref: FOI-2024- 10052

12 June 2024

**AJB**

By email: [foi+request-11044-194dbff7@righttoknow.org.au](mailto:foi+request-11044-194dbff7@righttoknow.org.au)

Dear AJB

### Freedom of Information Request- Access Decision

1. I refer to your request of 13 May 2024 to this Office under the *Freedom of Information Act 1982* (FOI Act) for access to documents in the following terms:

*"According to the Commonwealth Ombudsman Disclosure Log, on 3 November 2023, the Ombudsman granted access to emails or other communications directed at all staff about the Royal Commission on the Robo-debt Scheme. The Commonwealth Ombudsman reference is FOI-2023-10082. A full disclosure was made of 3 documents and a partial disclosure was made of 10 documents.*

*Please grant access to the UNREDACTED VERSIONS of disclosed documents under the FOI Act by reply email."*

### Decision

2. This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our Office under s 23 of the FOI Act.
3. Our Office has identified 13 documents relevant to your request. Our Office identified the documents by searching our electronic records management system and electronic documents saved on shared or network drives. A schedule setting out the relevant documents is at **Attachment A**. I have included copies with this email.
4. I have decided:

- to grant full access to 3 documents
- to grant access to 9 documents in part.
- to refuse access to 1 document

### **Reasons for decision**

### **Material taken into account**

5. In making my decision I had regard to the following:

- the terms of your request
- the content of the documents to which you sought access
- consultations with relevant Ombudsman staff members
- consultation responses from the Commonwealth Ombudsman
- the relevant provisions of the FOI Act
- Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, available at [www.oaic.gov.au](http://www.oaic.gov.au) (**FOI Guidelines**)
- Relevant Office of the Australian Information Commissioner (OAIC) determinations, Administrative Appeals Tribunal (AAT) decisions and court decisions.

### **Conditional exemption– personal privacy: s 47F**

6. Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.

### ***Personal information***

7. ‘Personal information’ is defined in section 4 of the FOI Act as:

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

*(a) whether the information is true or not, and*

*(b) whether the information is recorded in a material form or not.*

8. The documents contain personal information in the form of Ombudsman staff full names and contact information, including phone numbers and direct email addresses. I am satisfied that the relevant information is personal information: s 4 of the FOI Act.

**Disclosure unreasonable**

9. If information is personal information, it will be conditionally exempt if its disclosure would be 'unreasonable.' 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
- d. any other matter I consider relevant.

10. With regards to staff names and direct contact information, the relevant information is not well known. The individuals to whom the information relates are not generally known to be associated with the relevant information and the relevant information is not readily available from public sources. Our Office has generic contact numbers and email contact points. Therefore, members of the public do not require knowledge of full staff names or direct phone numbers and email addresses in order to communicate with our Office.

11. I understand that the name and contact information of one of the affected staff members is publicly available in connection with other material (for example the Australian Government directory). However, I am of the view that it is still unreasonable to disclose this information in response to this request. This individual concerned is not publicly associated with these documents.

12. Previous decisions of the IC support that where there is no need for an applicant to contact a particular public servant in the future, disclosure of a public servant's name may be unreasonable. This includes where an individual may already have records

which reveal the names of the relevant staff. Additionally, the documents will be published publicly on the 'Right to Know' website which further increases the risk of inappropriate contact. I find that it would be unreasonable in this case as, in my view, disclosure of the staff names could subject the individuals to inappropriate contact and be to their detriment – *Warren; Chief Executive Officer, Services Australia and (Freedom of Information)* [2020] AATA 467, [83]..

### ***Disclosure not in the public interest***

13. Section 11A (5) of the FOI Act provides that while an agency must give a person access to a document if it is conditionally exempt, access may be refused if the document's disclosure would, on balance, be contrary to the public interest.
14. In deciding whether or not access should be given to this information, on the basis that it is in the public interest to do so, I have taken into account the public interest factors for and against disclosure, s 11B (3) of the FOI Act, the FOI Guidelines at paragraphs [6.17 – 6.22], as well as matters specific to this agency's functions and operating environment.
15. I am not of the view that in this instance access to the personal information of public servants would increase public participation in Government processes or contribute to scrutiny and discussion around government decisions and investigations.
16. The following factors mitigate against disclosure:
  - a. Release of the information could reasonably be expected to prejudice the protection of a person's right to privacy.
  - b. Release of the information could reasonably be expected to impede the Office's work health and safety obligations under the Work Health and Safety Act 2011 (Cth).
  - c. Disclosure of the relevant personal information could reasonably be expected to result in inappropriate contact resulting in inefficiencies or impediments to the Office's operations.
17. Pursuant to subsection 11A(5) of the FOI Act, I have concluded that this disclosure at this time would be, on balance, contrary to the public interest.

## Conditional exemption – Certain operations of agencies: s 47E

18. Subsection 47E(d) of the FOI Act relevantly provides that:

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

...

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

19. The documents contain an automatically generated transcript of a 'Q and A' style session with the Ombudsman.

20. The automatically generated transcript of the meeting is low quality and misrepresents what occurred at the meeting. These errors are more than merely typographical, and at some points impact or even reverse the meaning of what was said during the meeting. In these circumstances, disclosing the transcript would amount to publishing incorrect information about the views of the Ombudsman and staff on this topic.

21. In my view, this would have a detrimental effect on confidence in the agency. As a complaint handling body, that must persuade agencies to adopt our recommendations, this would have a real and substantial adverse effect on the conduct of our operations.

22. I note that I am prohibited from taking into account that access to the document could result in a person misinterpreting or misunderstanding the document. However, in my view, this does not prevent me from considering that the document is not a true record of what was said in the meeting, and circulating an inaccurate record of our views could compromise confidence in the Office. This would be reasonably likely to inhibit willingness to share complaints with our Office and the persuasiveness of our conclusions.

### ***Disclosure not in the public interest***

23. Section 11A (5) of the FOI Act provides an agency must give a person access to a document that is conditionally exempt at a particular time, unless, in the circumstances, disclosure would, on balance, be contrary to the public interest.
24. In considering whether access would, on balance, be contrary to the public interest, I have considered the factors for and against disclosure, including the factors identified in s 11B (3) of the FOI Act. I have also considered the public interest factors favouring and against disclosure in the FOI Guidelines [6.17 –6.22], as well as matters particular to the Ombudsman’s functions and operating environment.
25. In my view, factors favouring disclosure include that disclosure would:
- a. promote the objects of the FOI Act, including to inform the community of the Government’s operations, including, in particular the practices followed by the Government in its dealings with external agencies, and enhance the scrutiny of government decision making; and
  - b. inform debate on a matter of public importance, including to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.
  - c. however, noting that the transcript would also materially misinform about these matters of importance, I have moderated the weight given to these factors.
26. I have also considered factors against disclosure, particularly that the purpose of the meeting was to facilitate a candid discussion of the outcomes of the Royal Commission among staff, and for staff to ask questions of the executive about the topic.
27. The disclosure of internal candid discussion could reasonably be expected to stifle such discussions in future. The ability to speak candidly and frankly when discussing administration of the Ombudsman’s functions ensures the Office remains robust and dynamic. If officers do not feel they can candidly and frankly communicate with each other to discuss, question, suggest and workshop ideas, this could reasonably be expected to stifle such future discussion.

28. Additionally, information in the transcript includes content that relates to completed and ongoing Ombudsman investigations. This information is exempt from production under s 47E(d) of the FOI Act. Ombudsman investigations are dealt with in private pursuant to s 8(2) of the *Ombudsman Act 1976*, and Ombudsman officers are to observe confidentiality with respect to information disclosed under the Act.
29. I have considered the factors for and against disclosure and find, on balance, that the factors against disclosure outweigh the factors in favour of disclosure. Therefore, I have concluded that this disclosure at this time would be, on balance, contrary to the public interest.

### **Deletion of exempt/irrelevant matter – s 22**

30. Section 22 of the FOI Act allows an agency to delete irrelevant matters from a document which is otherwise irrelevant to an applicant's FOI request and to provide an applicant with access to an edited copy.
31. Office updates contained in document 12 that have no correlation to the Robodebt Royal Commission have been deleted as this material is out of scope. Additionally, the Microsoft Teams meeting links in documents 8 and 9 as well as internal file links in document 10 have been deleted as they are irrelevant to the request.

### **Review rights**

#### ***Internal review***

32. You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision-maker.
33. No particular form is required to apply for review although it will assist your case to set out the grounds on which you believe that the original decision should be changed. Applications for internal review can be made:
- via email to [information.access@ombudsman.gov.au](mailto:information.access@ombudsman.gov.au)
  - by mail to Commonwealth Ombudsman GPO Box 442 Canberra ACT 2601

34. If you choose to seek an internal review, you will afterward have a right to apply for Information Commissioner review (IC review) of the internal review decision.

### ***Information Commissioner review or complaint***

35. You also have the right to seek IC review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

36. If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

37. While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

38. You can make an IC review application or make an FOI complaint in one of the following ways:

- online at <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>
- via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

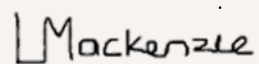
39. More information about the Information Commissioner reviews and complaints is available at its website: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

### **Contact**

40. You may contact me via email at [information.access@ombudsman.gov.au](mailto:information.access@ombudsman.gov.au) or via telephone on 1300 362 072.



Yours sincerely

LMackenzie

**Laura Mackenzie**

**Legal Officer**

**Legal Team**



**Schedule of documents- Freedom of Information Request FOI-2024-10052**

<b>Doc No.</b>	<b>Description of Document</b>	<b>Decision of Access</b>	<b>Exempt or irrelevant material</b>	<b>Information redacted</b>
<b>1.</b>	Robodebt Royal Commission – Analysis of Recommendations – Paper from July Executive Committee Meeting	<i>Full access</i>		
<b>2.</b>	Commonwealth Ombudsman Corporate Plan 2023-2024. Senior Executive Staff reviewed this document in July and August. Contained in the Ombudsman’s foreword and pg. 13 are references to Robodebt Royal Commission	<i>Full access</i>		

<p><b>3.</b></p>	<p>Robodebt Royal Commission Report Guidelines. This Guidance document sets out instructions for Complaints Officers on how to respond to contacts, or other enquiries/complaints in relation to the Report of the Royal Commission into the Robodebt Scheme</p>	<p><i>Part access</i></p>	<p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Surnames of Ombudsman staff redacted</p>
<p><b>4.</b></p>	<p>Transcript All-Staff Town Hall Royal Commission into the Robodebt Royal Commission Report</p>	<p><i>Exempt in full</i></p>	<p>Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)</p>	<p>Internal staff 'Q and A' meeting with the Ombudsman</p>
<p><b>5.</b></p>	<p>Intranet Post – A Message from the Ombudsman – Robodebt Royal Commission Report</p>	<p><i>Full access</i></p>		
<p><b>6.</b></p>	<p>Intranet post – Release to VOLT of Guidance for Complaint Officers on responding to contacts about the RRC report</p>	<p><i>Part access</i></p>	<p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Surnames of Ombudsman staff redacted</p>

			Conditionally exempt under s 47E(d) – (substantial adverse effect on agency operations)	Online link to Guidance document redacted
7.	Guidance document in VOLT – Robodebt Royal Commission Report	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Surnames of Ombudsman staff redacted
8.	Weekly Exec meeting – possible discussion between Ombudsman, Deputy Ombudsman and Senior Assistant Ombudsmans about the report	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Direct contact information of Ombudsman staff redacted
9.	All staff town hall invite – Royal Commission into the Robodebt scheme report	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Surnames of Ombudsman staff redacted

<p><b>10.</b></p>	<p>Intranet post – Recording available – All-staff town hall about Robodebt Royal Commission</p>	<p><i>Part access</i></p>	<p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Surnames of Ombudsman staff redacted.</p>
<p><b>11.</b></p>	<p>Email chain between HR and Execs about staff support strategies post RRC Report release</p>	<p><i>Part access</i></p>	<p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p>	<p>Surnames and direct contact information of Ombudsman staff redacted</p>
<p><b>12.</b></p>	<p>Intranet post – A message from the Ombudsman</p>	<p><i>Part access</i></p>	<p>Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)</p> <p>Exempt under s 22 of the FOI Act (Access to edited copies with exempt or irrelevant matter deleted)</p>	<p>Surnames of Ombudsman staff redacted</p> <p>Irrelevant information – Office updates from Ombudsman to Officers</p>

<b>13.</b>	Email to SLG	<i>Part access</i>	Conditionally exempt under s 47F of the FOI Act (unreasonable disclosure of personal information)	Surnames and direct contact information of Ombudsman staff redacted
------------	--------------	--------------------	---	---