

Your reference: MR24/00487

Our reference: FOI-2024-10017

26 June 2024

Sarveshcika Yuvaraj
Office of the Australian Information Commissioner
Intake and Early Resolution Team
By email only: foidr@oaic.gov.au

Dear Ms Yuvaraj

[Submissions – IC Review MR24/00487](#)

Thank you for the opportunity to provide submissions in this matter.

1. Based on Mr Baker's email of 20 May 2024 to the applicant, we under the scope of the IC review is limited to our decision to exempt Document 4. Accordingly, I have focused on this document in the submissions below. Please let us know if you would like any submissions on other aspects of the decision under review.
2. I have enclosed the documents requested in paragraph 3.14 of the Commissioner's Direction on IC reviews:¹
 - **Attachment A** is the original FOI request

¹ I have not included the attachments in the version of this correspondence sent to the applicant, as outlined in the direction.

- **Attachment B** is a folio of correspondence with the applicant, including evidence of attempts to engage informally to resolve the matter before the IC
- **Attachment C** is an unredacted copy of the document at issue. I note that the copy attached includes some deletions, however these appear in the version of the document requested by applicant (noting the applicant sought documents from the Office's disclosure log), no redactions have been added as part of the decision-making process in the current matter. If you believe it would assist you to see a completely unredacted copy of the transcript, please let us know.

Background on Document 4

3. The document at issue in the review is an automatically generated transcript of an 'all staff' meeting on 12 July 2023. This meeting was called after the Royal Commission into the Robodebt Scheme released its final report on 7 July 2023, to allow the Ombudsman to explain the findings of the Commission to staff and discuss the findings in relation to the Office.
4. The purpose of the meeting was to allow a candid discussion of a contentious issue. The automatic transcript functionality in Microsoft Teams was turned on so that staff who could not attend the meeting could read about it later.

Errors in Document 4

5. The transcript is of a very low quality and materially misrepresents the discussion in the meeting. Many words are incorrectly captured, often in ways that distort or even reverse the meaning of the sentences in which they appear.
6. By way of example, the first line of the transcript begins:

"Across the country here in Canberra, that's in particular, the nanny will people"

This should have captured the Ombudsman's Acknowledgement of Country paying respects to the Ngunnawal people, but the topic is barely discernible, even to an audience familiar with the content.

Submissions

7. Disclosure of the transcript in these circumstances would have a substantial adverse effect on operations of the Office and is against the public interest. The Office maintains the document is therefore conditionally exempt under s 47E of the FOI Act.
8. Firstly, the purpose of the meeting was to allow a candid discussion of the outcomes of the Royal Commission among staff, and for staff to freely ask questions of the executive about the topic. It is necessary for the proper management of personnel to offer an opportunity for staff to discuss and debrief after a significant event, such as the Royal Commission and release of associated findings, that directly impacts on staff and their work. Forums of such nature are designed to allow staff to debrief in a safe environment and explore issues that may be causing concern or anxiety freely, and away from the public eye.
9. The Office has a primary duty of care to ensure, so far as reasonably practicable, the health and safety of workers and other who may be affected by their business or undertaking. Among other things, this duty requires the office to take steps to eliminate, or if elimination is not possible, manage risks to health and safety of personnel while at work. Undertaking meetings such as this, after a significant event, is an important aspect of meeting such duties. To ensure that such duties are being appropriately met, it is crucial meetings occur in a private and safe manner, so that staff can freely provide information, raise concerns, obtain information they require to manage the impact of the significant event on themselves and their staff and can explore issues of concern openly.
10. The knowledge that a transcript of such discussions might be publicly disclosed would be reasonably likely to inhibit the willingness of the executive to speak with full candour to an internal audience, as well as inhibiting the willingness of staff to participate in such discussions in the future. This would have a substantial adverse effect on the agency's management of staff and could have a significant effect on the wellbeing and morale of staff. This would pose a risk of harm to staff, and undermines the Offices ability to manage the health and safety of staff in future.
11. The adverse impact of release would likely be amplified in this case, noting the nature of the application would see the document published publicly on a

website. The Office considers the nature of the release in this instance, noting the above concerns is relevant, indicating disclosure may be unreasonable.²

12. Secondly, the automatically generated transcript materially misrepresents what occurred at the meeting. These errors are more than merely typographical, and at some points impact the meaning of what was said during the meeting. This is a nuanced and complex topic, and in these circumstances, disclosing the transcript would amount to publishing incorrect information about the views of the Ombudsman and staff.
13. As outlined in the decision – we understand that s 11B(4) of the FOI Act expressly states that certain factors must not be taken into account in deciding whether access to a document would be contrary to the public interest. Our concern is not that providing access to the document could result in a person misinterpreting or misunderstanding **the document**.
14. Rather, the document is not a true record of what was said in the meeting. Providing access would amount to publishing an inaccurate record of the Ombudsman's views on a sensitive topic. This would cause confusion and could compromise confidence in the Office far beyond merely misunderstanding the document itself. This would be reasonably likely to inhibit the willingness to share complaints with our Office and the persuasiveness of our conclusions. This would be a substantial adverse effect on the operations of the Office, and contrary to the public interest.
15. In assessing the public interest test, we fully accept that the Office's position on the findings of the Royal Commission is an important topic of significant public interest. However, this does not mean there is a public interest in releasing a document which materially misrepresents the Office's position on this sensitive topic.

² FG' and National Archives of Australia [2015] AICmr 26 [44]

16. Disclosure of an incorrect record about what was said in an internal meeting does not serve to increase transparency about a matter of public importance. The Ombudsman has published a statement in response to the findings of the royal commission, which provides far better public visibility of his views on the outcome.
17. In considering the public interest test, we consider that there are a number of factors against disclosure that are relevant, and would outweigh the public interest factors favouring disclosure. These include:
- a. prejudice to the welfare and wellbeing of staff in future;
 - b. prejudice to the Office's ability to comply with work health and safety obligations;
 - c. release may have a substantial adverse effect on the management and assessment of personnel in future;
 - d. prejudice to trust and confidence in the Office, there therefore the Office's ability to complete core functions; and
 - e. prejudice to candour and frankness during staff meetings on key issues.

Thank you for the opportunity to provide submissions on this matter. Please contact me if we can be of any further assistance.

Yours Sincerely



Matt Jackson
Assistant Director
Legal Team