

OFFICIAL



Australian Government

Department of Finance

Reference: FOI 24-25/023
Contact: FOI Team
E-mail: foia@finance.gov.au

“Me” via Right to Know

By email only: foi+request-11488-be09ae94@righttoknow.org.au

Dear Me,

**Internal Review Decision and Statement of Reasons issued under the
Freedom of Information Act 1982 – FOI 24-25/023**

Original request

On 5 June 2024, the Department of Finance (Finance) received your email, in which you sought access under the Commonwealth *Freedom of Information Act 1982* (FOI Act) to the following:

- “...1. Attachment A to FOI 23-24/034 Document 1
2. ASIC statements referred to in FOI 23-24/034 Document 1 [2(c)]
3. Any documents not exemptable under s 42 that relate to the subject matter of FOI 23-24/034 Document 1 [13] (ASIC's potential inability to use CDDA)
4. Documents other than RMG 401 that talk to the appropriateness of granting an AoG application for an omission of an NCE (cf an act of an NCE in FOI 23-24/034 Document 1 [12(a)])
5. Attachment A to FOI 23-24/034 Document 2
6. Any documents not exemptable under s 42 that relate to the subject matter of FOI 23-24/034 Document 2 [4(a)], including the relevance of ASIC Act s 11
7. Attachment C to FOI 23-24/034 Document 2
8. Attachment A to FOI 23-24/034 Document 3
9. Attachment C to FOI 23-24/034 Document 3
10. Attachment A to FOI 23-24/034 Document 4
11. Attachment A to FOI 23-24/034 Document 5
12. Attachment A to FOI 23-24/034 Document 6

...

Personal information of non-SES (excl a/SES) is excluded. Personal information of third parties, narrowly construed, is excluded. Legal advice, where it was authored by someone on the roll of a supreme court and the entire document is a legal advice, is excluded.

Original decision

On 5 August 2024, Finance's decision maker notified you of their decision, and of the 49 documents identified within the scope of your request the decision maker decided to:

- grant access in part to 4 documents, subject to the redaction of exempt material under sections 37(2)(b), 47C, 47E(d), 47F, and irrelevant material under section 22(1)(a)(ii) of the FOI Act;
- refuse access to 42 documents under sections 37(2)(b), 47C, 47E(d), 47F, 47G, and 22(1)(a)(ii) of the FOI Act; and
- grant access in full to 3 documents, with irrelevant material under section 22(1)(a)(ii) of the FOI Act redacted.

Request for internal review

On 15 August 2024, you sought internal review of Finance's decision for the following reasons:

I am writing to request an internal review of Department of Finance's handling of my FOI request 'Finance AoG decisions re: ASIC (23-24/034 follow ups)'.

Please provide the documents with each redaction given only one exemption. This is a ground of internal review.

On receiving the documents in that manner, I intend to submit further points of internal review. If Finance finalise the internal review without considering the further points, I will progress to IC review.

I consider that you have requested a review of an access refusal decision under section 54 of the FOI Act. The purpose of this letter is to provide you with notice of my decision under section 54C of the FOI Act.

Authorised decision-maker

I am authorised by the Secretary of Finance and subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Internal Review Decision

I have decided to vary the original decision and release additional information as follows:

- Paragraphs 29 and 30 in Document 7,
- Paragraph 25 in Document 8,
- Paragraphs 15 to 17 and the page 6 footnotes in Document 24, and
- Paragraphs 32 and 40 to 48 in Document 45.

I have decided to release this information as it is factual information and publicly available.

I have also decided to:

- vary the exemptions applying to Documents 7, 8, 24 and 45 to better reflect the content of the exempt material, and
- vary the exemptions applying to Documents 1-6, 26-44 and 46-49, as I consider that these documents also contain information relating to operations of agencies under section 47E(d) of the FOI Act.

In summary, I have decided to:

- grant access in full to the following 3 documents with irrelevant material under section 22(1)(a)(ii) of the FOI Act redacted: Documents 9, 23 and 25,
- grant access in part to the following 4 documents subject to the redaction of exempt material under sections 37(2)(b), 47C, 47E(d), 47F and irrelevant material under section 22(1)(a)(ii) of the FOI Act: Documents 7, 8, 24 and 45, and
- refuse access to the remaining 42 documents, Documents 1-6, 10-22, 26-44 and 46-49 under sections 37(2)(b), 47C, 47E(d), 47F, and 22(1)(a)(ii) of the FOI Act, as relevant and set out in the schedule to this letter.

The documents and relevant exemptions are set out in the schedule at **Attachment A**.

I affirm the decision to refuse access to parts 3, 4, and 6 of the request under section 24A on the basis that the documents you have requested access to do not exist.

Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the FOI Act.

Material taken into account

In accordance with section 26(1)(a) of the FOI Act, in making my decision, I have stated any material question of fact, the material on which these findings were based, and the reasons for my decision to grant or refuse access to the documents.

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- consultations with other agencies;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Reasons for decision

I have decided to grant and refuse access to the material within the scope of your request, subject to the following provisions of the FOI Act.

Section 32 – Interpretation of Part IV of the FOI Act

Section 32 of the FOI Act relevantly provides:

A provision of this Part by virtue of which documents referred to in the provision are exempt documents, or are conditionally exempt:

- (a) shall not be construed as limited in its scope or operation in any way by any other provision of this Part by virtue of which documents are exempt documents, or are conditionally exempt; and
- (b) shall not be construed as not applying to a particular document by reason that another provision of this Part of a kind mentioned in paragraph (a) also applies to that document.

The FOI Guidelines, in discussing the section 47G conditional exemption, relevantly provide:

[6.108] This conditional exemption does not apply to trade secrets or other information to which s 47 applies (s 47G(2)). In other words, a decision maker should consider an exemption under s 47 for documents containing trade secrets or other information to which s 47 applies if the circumstances call for it. This is a limited exception to the normal rule that more than one exemption may apply to the same information (see s 32). [Emphasis is my own.]

Both section 32 of the FOI Act and the FOI Guidelines are clear that authorised decision makers under the FOI Act may decide that more than one exemption may apply to the same information in a document where it meets the requirements of the relevant provision. Therefore, I consider it was open to the original decision maker to determine that multiple exemptions under the FOI Act applied to the documents within scope of your request.

I also rely on section 32 of the FOI Act to apply multiple exemptions and find that Documents 7, 8, 24 and 45 are exempt in part under the FOI Act, and to find that Documents 1-6, 10-18, 20-22, 26-44 and 46-49 are fully exempt under the FOI Act.

Section 37 – Documents affecting enforcement of law and protection of public safety

Section 37(2) of the FOI Act relevantly provides that:

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

...

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

...

The FOI Guidelines provide:

[5.127] This exemption requires satisfaction of 2 factors. There must be a reasonable expectation that a document will disclose a method or procedure and a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure. If the only result of disclosing the methods would be that those methods were no surprise to anyone, there could be no reasonable expectation of prejudice. However, where a method might be described as ‘routine’, but the way in which it is employed can reasonably be said to be ‘unexpected’, disclosure could prejudice the effectiveness of the method.

I consider Documents 7, 8, 10-18, 20-21, 24 and 45 contain information that is exempt in part under section 37(2)(b). Relevantly, parts of the documents discuss the Australian Securities and Investment Commission’s (ASIC) methods or procedures preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law. The documents also include the third party material considered as part of ASIC’s methods and procedure in dealing with matters arising out of potential breaches or evasions of the law.

I am satisfied that there is a reasonable expectation that the release of the material would disclose information about the ASIC’s investigative methods and procedures for investigating matters arising out of breaches of law. I am further satisfied that the disclosure of this information would prejudice the effectiveness of those methods or procedures.

I consider that the relevant parts of the documents contain information about ASIC's processes and functions in relation to investigations under section 911D of the *Corporations Act 2001*. As a result, these parts of the documents reveal the direction and pivotal considerations of an ASIC investigation.

I am therefore satisfied that the release of this information would disclose a method or procedure in relation to the investigation of a matter arising out of the law, and that this disclosure could reasonably prejudice these methods or procedures. I consider that this material in Documents 7, 8, 10-18, 20-21, 24 and 45 is exempt under section 37(2)(b) of the FOI Act.

Section 47C – Documents subject to deliberative processes

Section 47C of the FOI Act provides:

- (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.

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.

The FOI Guidelines relevantly provide:

[6.54] A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Documents 7-8, 10-15, 17-18, 24 and 45 in scope of your request relate to submissions made by a third party on behalf of act of grace claimants. These documents contain information including opinion, advice and recommendations from ASIC and other third parties, and were presented to Finance in the process of considering specific act of grace requests.

One of Finance's functions as an agency is to consider applications for and make decisions about act of grace claims. The relevant information in these documents was used in a consultation process to determine whether act of grace payments should be made to the relevant claimants. As such, I consider this deliberative matter satisfies the requirements outlined in section 47C and the FOI Guidelines.

Accordingly, I have decided that this information in Documents 7-8, 10-15, 17-18, 24 and 45 would disclose deliberative matter and is conditionally exempt under section 47C of the FOI Act.

Section 47E – Material affecting certain operations of agencies

Section 47E of the FOI Act provides:

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 an agency.

The FOI Guidelines provide:

[6.114] The conditional exemption may also apply to a document that relates to a complaint made to an investigative body. Disclosure of this type of information could reasonably affect the willingness of people to make complaints to the investigative body, which would have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations. Further, disclosure of information provided in confidence by parties to a complaint or investigation may reduce the willingness of parties to provide information relevant to a particular complaint and may reduce their willingness to participate fully and frankly with the investigative process. In such cases the investigative body's ability to obtain all information would be undermined and this may have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations.

[6.115] The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its operations in an expected manner...

In *DZ and Commonwealth Ombudsman* [2014] AICmr 137, it was found that disclosure of certain material could adversely affect the willingness of agencies to cooperate with another investigative body. Furthermore, the Information Commissioner provided that:

"It is likely that a situation will arise in future that involves information held across more than one agency and that agencies will be less forthcoming about the issues this raises if the information is not treated confidentially. If agencies are less forthcoming and less willing to consider and consult on the proper course of action in this situation, the [Ombudsman's] investigations will be less efficient."

Further, the AAT has recognised in *Telstra Australian Limited and Australian Competition and Consumer Commission* [2000] AATA 71 (7 February 2000) that the conduct of an agency's regulatory functions can be adversely affected in a substantial way when there is a lack of confidence in the confidentiality of the investigative process. Similarly, in this instance, the ASIC's ability to carry out its regulatory functions would be affected if there was a lack of confidence in the confidentiality of their processes.

Documents 1-6, 22, 26-44, and 46-49 are decision letters from Finance to act of grace claimants. The decision letters include information from the submissions made by third parties and other agencies such as ASIC mentioned below, including information about ASIC's operations in monitoring and regulating companies, and their approach to potential investigations of companies.

Documents 7, 8, 10-15, 17-19, 24, and 45 in scope of your request relate to submissions made by a third party, including from other government agencies, on behalf of act of grace claimants. The documents also include information from ASIC about how they deal with companies, handle information, and the matters they consider prior to pursuing an investigation.

I consider that disclosure of this information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of Finance and ASIC.

Some of the material within the documents was provided by ASIC on the assumption that it would be treated as confidential information and not disclosed. If sensitive information shared in confidence by government agencies is exposed, it could reasonably be expected that those agencies would be less forthcoming with the breadth of material and views they provide in future submissions. If this occurred, this would materially impact the quality of Finance's decision making in relation to act of grace applications.

The documents also contain confidential information that was provided by third parties to enable Finance to properly exercise its functions in assessing act of grace claims. I consider that the disclosure of third-party information could have a substantial adverse effect on the willingness of individuals to make fulsome submissions to Finance for the purposes of the act of grace claim process if they were aware that such information would be disclosed to other, unknown third parties through the FOI process.

If act of grace claimants only provide high level or incomplete information in their submissions, due to concerns that more fulsome submissions will not be kept confidential, then decision makers would not have all the relevant information to assess a claim. I consider this would substantially affect the ability of Finance's decision makers to make correct and preferable decisions about act of grace applications, which may disadvantage act of grace claimants.

Act of grace is a discretionary payment under the *Public Governance, Performance and Accountability Act 2013*. There is no situation which creates an automatic entitlement to an act of grace payment and a decision maker must consider all relevant facts to determine whether a special circumstance exists to justify a payment. Affected individuals, other third parties and agencies provide comprehensive and frank submissions relating to specific matters to assist Finance in making an act of grace decision. Finance is heavily reliant on the submissions of third parties and other agencies to enable it to consider all relevant material relating to the claim and determine whether a special circumstance exists.

Therefore, I consider that the disclosure of this information could have a material adverse effect on interagency communications, communications from claimants and other third parties to Finance, and have a substantial adverse effect on Finance's operations in making act of grace decisions in the future.

Accordingly, I have decided that information in Documents 1-8, 10-15, 17-18, 22, 24, 26 to 49 is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Personal privacy

Section 47F of the FOI Act states:

- (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.

Subsection 4(1) of the FOI Act defines ‘personal information’ with reference to the definition in the *Privacy Act 1988* (Privacy Act). Section 6 of the Privacy Act provides that personal information is 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 whether the information or opinion is recorded in a material form or not.

The FOI Guidelines relevantly provide:

[6.133] The personal privacy conditional exemption is designed to prevent the unreasonable invasion of third parties’ privacy. 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.

[6.134] In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* stated that:

... 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 ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

[6.137] Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the document contains third party personal information
- release of the document would cause stress to the third party
- no public purpose would be achieved through release.

[6.138] As discussed in the IC review decision of ‘*FG*’ and *National Archives of Australia* [2015] AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency’s or minister’s collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their request as to their reasons for seeking access and their intended or likely use or dissemination of the information and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

Documents 1-8, 11-15, 17-22, 26-49 contain personal information, including the names and ‘credit information’ of third parties, as described in section 6N of the Privacy Act. These documents also contain the personal information of act of grace claimants and third parties, including overviews of individuals’ impact statements, their personal affairs and details of their financial situation.

In reviewing the documents under review, I do not consider that the personal information contained within the documents is well known, and consider that the persons to whom the information relates are not known to be associated with the matters dealt with in the relevant document.

Furthermore, I have given significant weight to the context of these documents, in which individuals have sought assistance in their time of hardship. I consider there is a high likelihood that, given the passage of time, these individuals may not wish for the issues raised in these documents to be canvassed in the public sphere.

I consider that the release of the personal information within the documents would be unreasonable and could cause considerable stress and inconvenience on the third parties. This is especially so as the FOI Act does not control or restrict information once released. Furthermore, I do not consider that the disclosure of third-party personal information would achieve a public purpose in this instance.

Accordingly, I consider that the disclosure of personal information in Documents 1-8, 11-15, 17-22, 26-49 would be unreasonable, and I have decided to conditionally exempt these parts under section 47F of the FOI Act.

Public interest test

Section 11A of the FOI Act relevantly provides:

- (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.

In finding that Documents 1-8, 10-15, 17-18, 22, 24, and 26 to 49 contain conditionally exempt material, I am required to consider whether it would be contrary to the public interest to give access to the information in the documents at this time.

Factors favouring disclosure

Section 11B of the FOI Act relevantly provides:

- (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.

In considering the scope of your request and the content of the documents, I have taken into account the intention of the FOI Act to provide for open Government and that the release of the documents would promote transparency of Government activities. I consider that the release of the documents would promote the objects of the FOI Act in demonstrating the actions that agencies take and the matters considered in making decisions.

However, I have balanced these considerations against the factors against disclosure below.

Factors against disclosure

Paragraph [6.233] of the FOI Guidelines provides a non-exhaustive list of factors against disclosure. I consider that the following factors apply to these documents, in that the release of the information in the documents could reasonably be expected to:

- prejudice law enforcement, by disclosing ASIC's investigative methods and procedures, and by informing the entities ASIC regulates as to how and why ASIC will act on specific information in specific circumstances;
- inhibit interagency communications regarding consideration of act of grace payments;
- prejudice the protection of an individual's right to privacy; and
- prejudice the effectiveness of an agency's decision-making and deliberative processes; in particular, by:
 - discouraging full and complete sharing of opinions and recommendations; and
 - harming the development of sound decision-making.

I consider that the release of documents within the scope of your request could prejudice law enforcement by disclosing ASIC's investigative methods and procedures. This would inform the entities ASIC regulates how and why ASIC will act on specific information in specific circumstances.

Further to this, I have considered the use of ASIC's investigations as a method of promoting market integrity and consumer protection in relation to the Australian financial system and find that the disclosure of the information in these documents would prejudice the effectiveness of those methods or procedures. I consider that the release of these documents may assist other entities in endeavours to evade ASIC investigations and thereby inhibit ASIC's ability to protect the Australian financial and payments system. There is a strong public interest in ensuring that ASIC can conduct its law enforcement functions and that these functions are not compromised or prejudiced in any way. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I consider that the release of documents within the scope of your request would inhibit interagency communications in considering act of grace payments. Finance seeks submissions from other Commonwealth agencies, which are relied on as a prominent element of the decision-making process. Some information is provided on the assumption that it remains confidential. If the redacted material is released it would divulge information or matter communicated in confidence between ASIC and Finance, which could adversely affect the level of trust and cooperation between the agencies.

It could lead to ASIC and other agencies losing trust in Finance's ability to handle confidential information about current and future act of grace claims, resulting in less comprehensive and frank submissions. Accordingly, disclosing this material would adversely affect Finance's ability to consider all relevant material relating to claims and substantially impact the quality of decision-making in relation to act of grace applications. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I consider that the release of documents within the scope of your request could prejudice the protection of an individual's right to privacy. The documents subject to the request contain significant personal information. Decision letters, for example, contain overviews of individuals' impact statements, their personal affairs and details of their financial situations which they have provided in the context of making an act of grace request. It would be unreasonable and contrary to the expectations of those individuals who have sought assistance

through the act of grace mechanism to disclose information identifying individuals and the circumstances of their request.

I also consider disclosure could impair Finance's ability to efficiently deliver services, noting that if an individual does not provide their personal information, Finance may be unable to adequately process an act of grace application.

I consider, for the reasons above, that the release of the conditionally exempt material in the documents would be contrary to the public interest and that the above factors weigh strongly against disclosure.

Irrelevant factors

Section 11B of the FOI Act relevantly provides:

- (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.

I have not taken into account any of these irrelevant factors.

Balancing public interest factors

The FOI Guidelines relevantly provide:

[6.238] 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 of 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.

I acknowledge that there is public interest in providing access to the information in the documents. However, on balance, I consider that the factors against disclosure outweigh the factors favouring disclosure.

I consider there is a public benefit in Finance being able to provide high quality decisions and advice in exercising its functions and powers in relation to the Commonwealth's act of grace mechanism. This involves, and can only be achieved through, the provision of comprehensive and frank submissions from act of grace claimants, other third parties, and agencies such as ASIC.

To enable Finance to undertake a best practice approach in considering act of grace claims, I consider it essential to maintain an individual's right to privacy where they have provided sensitive personal and/or business information for Finance to consider, and to maintain confidentiality in general over all submissions received about an act of grace claim. This will ensure that Finance continues to receive robust information and advice which, in turn, enables Finance to make robust and well-informed act of grace decisions. Maintaining the confidentiality of material received for act of grace decisions therefore benefits all current and future act of grace claimants.

There is also a strong public benefit in maintaining the confidentiality of ASIC's investigative methods and procedures to ensure that ASIC can maintain its role as a regulator, and that its regulatory functions are not prejudiced by the release of such information.

As Finance has previously advised, act of grace payments are discretionary; there is no situation which creates an automatic entitlement to an act of grace payment. As a result, there is limited value and relevance of any matters considered in these act of grace decisions to future applications.

Therefore, I consider that on balance the release of the conditionally exempt material in the documents would be against the public interest and have decided to refuse the release of this material.

Section 22 – Access to edited documents with irrelevant matter deleted

Section 22 of the FOI Act relevantly provides:

- (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...

In your request dated 5 June 2024, you advised that:

“Personal information of non-SES (excl a/SES) is excluded. Personal information of third parties, narrowly construed, is excluded. Legal advice, where it was authored by someone on the roll of a supreme court and the entire document is a legal advice, is excluded.”

I consider that parts of documents marked ‘s22(1)(a)(ii)’ would disclose information that could reasonably be regarded as irrelevant to your request, including material which relates to the terms you have provided in the scope of your request. I have prepared an edited copy of the documents, with the irrelevant material deleted per section 22(1)(a)(ii) of the FOI Act.

Section 24A – Document cannot be found, do not exist or have not been received

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if after taking reasonable steps to find the document, the agency is satisfied that the document does not exist. In line with this provision, I have decided to refuse parts 3,4 and 6 from your original FOI request on 5 June 2024.

In coming to my decision, I have consulted with the internal business area responsible for discretionary payments. The business area has ensured that thorough searches were

undertaken of relevant Finance systems where any such documents may have been stored, such as:

- OneDrive and SharePoint
- Microsoft Outlook (SFC inbox);
- Local G Drive;
- EClaims system; and
- HPE Content Manager.

As a result of these consultations and searches, I am satisfied that all reasonable steps have been taken to find any a document that may fall within the scope of these parts of your request, and the documents could not be identified as they do not exist.

Review and appeal rights

In your request for internal review, you have indicated:

On receiving the documents in that manner, I intend to submit further points of internal review.

Part VI of the FOI Act, comprising of sections 52 to 54E, provides for internal review of decisions by agencies. Section 54E of the FOI Act relevantly provides:

This Part does not apply in relation to:
(a) a decision on internal review; or...

As this decision is a decision on internal review, section 54E of the FOI Act has the effect that you will not be able to request further internal review of this decision.

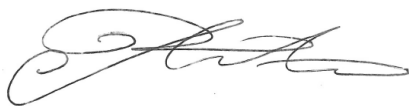
You are entitled to request an external review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at **Attachment B**.

Publication

Finance will publish the documents released to you on our [Disclosure Log](#).

If you have any questions about this request, please contact the FOI Team on the above contact details.

Yours sincerely,



Rachel Antone
First Assistant Secretary
Risk, Claims and Regulatory Reform Division
Department of Finance
17 September 2024

SCHEDULE OF DOCUMENTS RELEVANT TO FOI 24-25/023

Document No.	Date of Document	No. of Pages	Description of Document	Decision	Relevant provision
Part 1					
“Attachment A to FOI 23-24/034 – Document 1”					
1	1 October 2021	23	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
2	1 October 2021	23	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
3	1 October 2021	23	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
4	1 October 2021	23	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
5	1 October 2021	23	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
6	1 October 2021	24	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
Part 2					
“ASIC statements referred to in FOI 23-24/034 Document 1 [2(c)]”					
7	7 December 2020	11	ASIC Submission	Part release	s37(2)(b), s47C, s47E(d), s47F, s22(1)(a)(ii)
8	4 March 2021	10	ASIC Submission	Part release	s37(2)(b), s47C, s47E(d), s47F, s22(1)(a)(ii)
9	26 May 2021	2	ASIC Submission	Full access	s22(1)(a)(ii)
10	4 March 2021	4	Chronology	Refused in full	s37(2)(b), s47C, s47E(d)
11	13 September 2013	4	Chronology - Appendix 1	Refused in full	s37(2)(b), s47C, s47E(d), s47F
12	23 September 2013	1	Chronology - Appendix 2	Refused in full	s37(2)(b), s47C, s47E(d), s47F
13	17 October 2013	2	Chronology - Appendix 3	Refused in full	s37(2)(b), s47C, s47E(d), s47F
14	26 November 2013	2	Chronology - Appendix 4	Refused in full	s37(2)(b), s47C, s47E(d), s47F
15	2 December 2013	1	Chronology - Appendix 5	Refused in full	s37(2)(b), s47C, s47E(d), s47F
16	unknown	3	Chronology - Appendix 6	Refused in full	s37(2)(b)
17	1 December 2015	3	Chronology - Appendix 7	Refused in full	s37(2)(b), s47C, s47E(d), s47F
18	8 December 2015	2	Chronology - Appendix 8	Refused in full	s37(2)(b), s47C, s47E(d), s47F
19	5 April 2016	11	Chronology - Appendix 9	Refused in full	s47F
20	16 September 2016	117	Chronology - Appendix 10	Refused in full	s37(2)(b), s47F
21	28 March 2017	36	Chronology - Appendix 11	Refused in full	s37(2)(b), s47F

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Part 3					
“Any documents not exemptible under s 42 that relate to the subject matter of FOI 23-24/034 Document 1 [13] (ASIC's potential inability to use CDDA)”					
No documents identified.				Refused	s24A
Part 4					
“Documents other than RMG 401 that talk to the appropriateness of granting an AoG application for an omission of an NCE (cf an act of an NCE in FOI 23-24/034 Document 1 [12(a)])”					
No documents identified.				Refused	s24A
Part 5					
“Attachment A to FOI 23-24/034 Document 2”					
22	September 2022	31	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
Part 6					
“Any documents not exemptible under s 42 that relate to the subject matter of FOI 23-24/034 Document 2 [4(a)], including the relevance of ASIC Act s 11”					
No documents identified.				Refused	s24A
Part 7					
“Attachment C to FOI 23-24/034 Document 2”					
23	25 November 2020	1	ASIC Submission	Full access	s22(1)(a)(ii)
24	13 July 2021	10	ASIC Submission	Part release	s37(2)(b), s47C, s47E(d)
25	28 November 2001	61	ASIC Submission – Annexure	Full Access	Nil.
Part 8					
“Attachment A to FOI 23-24/034 Document 3”					
26	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
27	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
28	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
29	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
30	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
31	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
32	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
33	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
34	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F

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35	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
36	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
37	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
38	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
39	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
40	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
41	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
42	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
43	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
44	February 2023	19	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
Part 9					
“Attachment C to FOI 23-24/034 Document 3”					
45	13 April 2022	24	ASIC Submission	Part Access	s37(2)(b), s47C, s47E(d), s47F, s22(1)(a)(ii)
Part 10					
“Attachment A to FOI 23-24/034 Document 4”					
46	February 2023	21	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
47	February 2023	23	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
Part 11					
“Attachment A to FOI 23-24/034 Document 5”					
48	May 2023	31	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F
Part 12					
“Attachment A to FOI 23-24/034 Document 6”					
49	unknown	5	Decision letter to Act of Grace claimant	Refused in full	s47E(d), s47F



Australian Government

Department of Finance

Freedom of Information – Your Review Rights

If you disagree with a decision made by the Department of Finance (Finance) or the Minister for Finance (Minister) under the *Freedom of Information Act 1982* (the FOI Act) you can have the decision reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of the documents that has not been agreed to by Finance or the Minister, or if your application to have your personal information amended was not accepted. There are two ways you can seek a review of our decision: an internal review (IR) by Finance or the Minister, or an external review (ER) by the Australian Information Commissioner (IC).

Internal Review (IR)

If, Finance or the Minister (we/our), makes a Freedom of Information (FOI) decision that you disagree with, you can seek a review of the original decision. The review will be carried out by a different decision maker, usually someone at a more senior level.

You must apply for an IR within 30 calendar days of being notified of the decision or charge, unless we agree to extend your time. You should contact us if you wish to seek an extension.

We are required to make an IR decision within 30 calendar days of receiving your application. If we do not make an IR decision within this timeframe, then the original decision stands.

Review by the Australian Information Commissioner (IC)

The Office of the Australian Information Commissioner (OAIC) is an independent office who can undertake an ER of our decision under the FOI Act. The IC can review access refusal decisions, access grant decisions, refusals to extend the period for applying for an IR, and IR decisions.

If you are objecting to a decision to refuse access to a document, impose a charge, or a refusal to amend personal information, you must apply in writing to the IC within 60 calendar days of receiving our decision.

Third parties

If you are a third party objecting to a decision to grant someone else access to your information, you must apply to the IC within 30 calendar days of being notified of our decision to release your information. Further assistance is located [here](#).

Do I have to go through the internal review process?

No. You may apply directly to the OAIC for an ER by the IC.

If I apply for an internal review, do I lose the opportunity to apply for an external review?

No. You have the same ER rights of our IR decision as you do with our original decision. This means you can apply for an ER of the original decision or of the IR decision.

Do I have to pay for an internal review or external review?

No. Both the IR and ER are free.

How do I apply?

Internal review

To apply for an IR of the decision of either Finance or the Minister, you must send your review in writing. We both use the same contact details, and you must send your review request in writing.

In your written correspondence, please include the following:

- a statement that you are seeking a review of our decision;
- attach a copy of the decision you are seeking a review of; and
- state the reasons why you consider the original decision maker made the wrong decision.

Email: foi@finance.gov.au

Post: The FOI Coordinator
Legal and Assurance Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

External review (Information Commissioner Review)

For an ER, you must apply to the OAIC in writing. The OAIC ask that you commence a review by completing their online form [here](#).

Your application must include a copy of the notice of our decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Email: FOIDR@oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

The IC's enquiries phone line is 1300 363 992.

Can I appeal the Information Commissioner's external review decision?

Yes. You can appeal the Information Commissioner's ER decision to the Administrative Appeals Tribunal (AAT).

There is a fee for lodging an AAT application (as at 17 February 2023 it is \$1,011).

Further information is accessible [here](#).

The AAT's number is 1800 228 333.

Complaints

Making a complaint to the Office of the Australian Information Commissioner

You may make a written complaint to the OAIC about actions taken by us in relation to your application.

Further information on lodging a complaint is accessible [here](#).

Investigation by the Commonwealth Ombudsman

The Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be, or has been, investigated by the IC, the Ombudsman will consult with the IC to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. You will be notified in writing if your complaint is transferred.

Complaints to the Ombudsman should be made online [here](#).

The Ombudsman's number is 1300 362 072.