



OFFICIAL

## Freedom of Information (FOI) request

Notice of Decision

Reference: 2024/239

To Trav S

Email: [foi+request-11763-420858df@righttoknow.org.au](mailto:foi+request-11763-420858df@righttoknow.org.au)

Dear Trav S

I refer to your request of 26 July 2024 to the Department of the Prime Minister and Cabinet (the Department), for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

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 (extract):

*Please refer to the Department's document reference FOI/2021/003IR... states:*

*"In undertaking this internal review the Department has consulted the same individual consulted at the primary decision making stage regarding possible disclosure of their personal information"*

*Regarding those consultations. Please provide a copy of:*

- 1. Records of conversation/correspondence between the primary decision maker and the individual. Please include the name, title and position of the public servant involved*
- 2. Records of conversation/correspondence between the Department and the same individual following the primary decision. Please include the name, title and position of the public servant involved*
- 3. Documents evidencing the Department's inquiries with the individual into claims of commercial security contractors serving with the General Electric contingent in Banda Aceh*

## Request decided out of time

A decision on your request was due 9 September 2024. Unfortunately, the Department was unable to complete the processing of your request by the due date. In these circumstances the Department follows the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines) at paragraph 3.160.

As a result, review rights for your request can be direct to the Information Commissioner. Information on how to submit a review is at the bottom of this letter.

## 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.

- the terms of your request
- the FOI Act
- the Guidelines issued by the Information Commissioner<sup>1</sup> (the FOI Guidelines).

## Documents in scope of request

The Department has identified six 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 on grounds of:

- Section 47F personal privacy.
- Section 22 material reasonably regarded as irrelevant.

## Reason for decision

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

### 1. Section 47F - Public interest conditional exemption - personal privacy

Section 47F of the FOI Act provides:

- (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).*

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<sup>1</sup> section 93A of the FOI Act

The definition of 'personal information' in the FOI Act has the same meaning as the *Privacy Act 1988*. In determining what is included in this definition I have had regard to the description provided by the Office of the Australian Information Commissioner who is responsible for the regulation of privacy and freedom of information laws. That is personal information can include a broad range of information, or opinion, such that it could identify an individual.<sup>2</sup>

The documents captured by your request include correspondence created for the purposes of the Department entering into a third party consultation with an individual on grounds they may reasonably wish to object to the release of their personal information. The correspondence includes that third party's name, contact details, and material relating to their personal circumstances. I am satisfied the combination of information could lead to the third party being identified.

The documents also contain the name of a former staff member of the Department, a name which is unique enough that disclosure could result in them being identified. I consider disclosure of their name to a public website would result in the individual being identifiable as a former employee of the Department, and without their consent to publish their name this would be a breach of their right to privacy.

I am satisfied the documents contain identifiable personal information and I now turn my mind to the factors surrounding whether the disclosure of the personal information would be unreasonable as required in section 47F(2). I must have regard to the following:

- the extent to which the information is well known;
- 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;
- the availability of the information from publicly accessible sources; and
- any other matters that the Department considers relevant.

The personal information within the documents is not public and not well known. The persons to whom the information relates, are not known to have been associated with the matters dealt with in the documents.

The FOI Guidelines set out a range of other factors for the consideration of whether disclosure of personal information is unreasonable. In the circumstances of this request I consider the following other factors are relevant:

- disclosure would interfere with a person's right to privacy
- release of the information would cause stress to a third party
- the passage of time and that no public purpose would be achieved through disclosure.<sup>3</sup>

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<sup>2</sup> What is personal information: <https://www.oaic.gov.au/privacy/your-privacy-rights/your-personal-information/what-is-personal-information>

<sup>3</sup> Paragraph 6.137 of the Guidelines. See also McCallin and Department of Immigration [[2008 AATA 477](#)]

The Department has determined that it is not reasonably practicable to undertake consultation with all the third parties, but considers that it would be unreasonable to disclose their personal information in the absence of their expressed consent.

Having regard to all the factors discussed above, I am satisfied that parts of the requested documents contain 'personal information' and this information is conditionally exempt under section 47F of the FOI Act.

## 2. 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 interest<sup>4</sup>. In determining whether its disclosure 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 conditionally 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 section 11B(4) of the FOI Act, this includes:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in 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 documents 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.

In applying the public interest, I have noted the objects of the FOI Act<sup>5</sup> and the factors favouring access as listed in section 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 Act<sup>6</sup>
- the subject matter within the conditionally exempt documents does not seem to have the character of public importance, rather the matter has very limited scope and may only be of interest to a narrow section of the public
- the subject matter within the conditionally exempt documents does not offer any insights into public expenditure
- I am satisfied that your personal information is not contained within the conditionally exempt documents and therefore s 11B(3)(d) is not a relevant factor to favour access.

The FOI Act does not set out factors against disclosure and requires agencies to have regard to the FOI Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest<sup>7</sup>.

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<sup>4</sup> section 11A(5) of the FOI Act

<sup>5</sup> section 3 of the FOI Act

<sup>6</sup> section 11B(3)(a) of the FOI Act

<sup>7</sup> section 11B(5) of the FOI Act

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.<sup>8</sup>

The main factor against disclosure in this case is that disclosure would interfere with a person's right to maintain their privacy, and it is reasonable to expect the disclosure would cause stress to those individuals whose personal information is contained in the documents.

I also consider that there is a reasonable expectation, from any third parties with whom the Department engages through an FOI consultation, that any communications containing their reasons for contending disclosure of their personal information would be treated in confidence. Disclosing such records of consultation may prejudice the Department's engagement with third parties and substantially interfere with ability of third parties to exercise their rights under the FOI Act.

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 documents would be contrary to the public interest.

### 3. Deletion of irrelevant matter

Section 22 of the FOI Act authorises the Department to give access to an edited copy of a document if giving access to a document would disclose information that would be reasonably regarded as irrelevant to the request, and it is possible for the Department to prepare an edited copy, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

I have understood that your request was specific to the communications and or correspondence records that formed the FOI consultation. As such I find the attachments to the emails are reasonably irrelevant to this FOI request. I further note that these attachments are already the subject to another of your FOI requests and which is currently under review by the Information Commissioner.

Accordingly, I am satisfied that parts of the documents are irrelevant under section 22(1)(a)(ii) of the FOI Act. This is referenced in the Schedule of Documents.

## Review rights

If you disagree with my decision, you may apply for Information Commissioner review of the decision.

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](#).<sup>9</sup>

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<sup>8</sup> Paragraph 6.233 of the Guidelines

<sup>9</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

## 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](#).<sup>10</sup>

If you wish to discuss any aspect of your requests, you can contact the FOI Section by email at [foi@pmc.gov.au](mailto:foi@pmc.gov.au).

Yours sincerely



Ashleigh McDonald  
Assistant Secretary | Legal Policy Branch  
Department of the Prime Minister and Cabinet  
29 October 2024

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<sup>10</sup> <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>