



26 November 2024

Cyber Sceptic

BY EMAIL: foi+request-11774-758a62e3@righttoknow.org.au

In reply please quote:

FOI Request: FA 24/07/01802

File Number: FA24/07/01802

Dear Cyber Sceptic

Freedom of Information (FOI) request – Revised decision under section 55G of FOI Act Access

On 28 July 2024, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

On 30 October 2024, the Office of the Australian Information Commissioner (OAIC) issued a notice under section 54z of the FOI Act in which it notified the Department that the Information Commissioner would review the deemed access refusal decision of the Department.

Following the commencement of the Information Commissioner review, the Department has now made a revised decision on your request under section 55G of the FOI Act. The purpose of this letter is to provide you with the Department's revised decision.

1 Scope of request

You have requested access to the following documents:

I would like all available documents relating to the procurement detailed below. This includes justification as to why this was a limited tender, the decision maker who signed off on the procurement and the outcomes of the procurement (results delivered).

CN ID: CN3937378

Agency: Department of Home Affairs

Publish Date: 23-Dec-2022

Category: Research programs

Contract Period: 19-Oct-2022 to 18-Nov-2022 Contract Value (AUD): \$338,580.00

Description: Ransomware targeting framework Procurement Method: Limited tender

Limited Tender Exemption: App A: 6. Research and development services (but not inputs).

ATM ID: PRN0008310

Confidentiality - Contract: No

Confidentiality - Outputs: No

Consultancy: Yes

Consultancy Reason(s): Need for specialised or professional skills Agency Reference ID: 0070033236.

2 Revocation or variation of access refusal decision

Under section 15AC of the FOI Act, the Department was deemed to have refused your request for access to documents when it did not make a decision on your request within the statutory timeframes prescribed by the FOI Act.

Section 55G of the FOI Act provides for the revocation or variation of an access refusal decision, including a deemed refusal decision, during a review by the Information Commissioner.

Specifically, section 55G(1)(a) of the FOI Act provides that an agency may vary (or set aside and substitute) an access refusal decision if the variation or substitution would have the effect of giving access to a document in accordance with the request.

As a substantive decision on this request would have the effect of the Department giving access to one or more documents, either in full or in part, the Department has now revised its original deemed access refusal decision under section 55G(1)(a) of the FOI Act.

3 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

4 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- consultation responses from the third party consulted in accordance with the FOI Act
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

5 Documents in scope of request

The Department has identified six documents as falling within the scope of your request. These documents were in the possession of the Department on 28 July 2024 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

6 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release six documents in part with deletions

7 Reasons for Decision

My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

7.1 Section 22 of the FOI Act – irrelevant to request

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

On 29 July 2024, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

7.2 Section 47 of the FOI Act – Documents disclosing commercially valuable information

Section 47 provides that a document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

In determining whether the information within the documents is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I consider that document numbered one partially contains information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The information contained within the document is valuable for the purpose of carrying on the commercial activities in which the entity is engaged. The information is relevant to the profitability or viability of a continuing business operation. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity.

I have therefore decided that document numbered one is exempt in part from disclosure under section 47 of the FOI Act.

7.3 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. '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 whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to the following four factors set out in s.47F(2) of the FOI Act:

- *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 available resources;*
- *any other matters that I consider relevant.*

I have considered each of these factors below.

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to the procurement of Ransomware targeting framework rather than information which wholly relates to other individuals.

I note that a number of the individuals referred to in these documents are no longer employed by the Department, and it has not been practicable for the FOI Section to consult those individuals under section 27A to establish whether they wish to make exemption contentions in relation to the disclosure of their personal information.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

7.4 The public interest – section 11A of the FOI Act

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.*

Having regard to the above I am satisfied that:

- Access to the documents would promote the objects of the FOI Act.
- The subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- No insights into public expenditure will be provided through examination of the documents.
- You do not require access to the documents in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of third parties' right to privacy. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy, and this factor weighs strongly against disclosure.
- I am satisfied that if the Department were to release personal information without that person's express consent to do so, it would seriously undermine public confidence in the Department's ability to receive, retain and manage personal information. I consider such a loss of confidence to be against the public interest, and this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- 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 those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

9 Your review rights

Internal review

You do not have the right to seek an internal review of this decision. This is because section 54E(b) of the FOI Act provides that, when an agency is deemed to have refused an FOI request under section 15AC of the FOI Act, the applicant does not have the right to seek an internal review of the deemed decision.

The Department was deemed to have refused your request under section 15AC of the FOI Act because it did not make this decision within the statutory timeframes for the request.

While the Department has now made a substantive decision on your request, section 15AC of the FOI Act continues to apply to your request, which means that any request you make for internal review will be invalid.

Information Commissioner review

You can instead request the Australian Information Commissioner to review this decision. If you want to request an Information Commissioner review, you must make your request to the Office of the Australian Information Commissioner (OAIC) within 60 days of being notified of this decision.

You can apply for an Information Commissioner review at: [Information Commissioner review application form on the OAIC website](#).

If you have already applied for an Information Commissioner review, there is no need to make a new review request. The OAIC will contact you shortly to give you an opportunity to advise whether you wish the review to continue, and to provide your reasons for continuing the review.

You can find more information about Information Commissioner reviews [on the OAIC website](#).

10 Making a complaint

You may make a complaint to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. This is a separate process to the process of requesting a review of the decision as indicated above.

You can make an FOI complaint to the Office of the Australian Information Commissioner (OAIC) at: [FOI Complaint Form on the OAIC website](#).

11 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

Yours sincerely



Ashley Bell

60108474

**Authorised Decision Maker
Department of Home Affairs**

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982***

FOI request: FA 24/07/01802

File Number: FA24/07/01802

No.	Date of document	No. of pages	Description	Decision on release	
1.	-	41	Disruption Framework Counter Ransomware Initiative	Exempt in part	s.47(1)(b) s.47F(1)
2.	26 September 2022	3	RE: For urgent advice RE: PRN0008310 - Requesting advice on commencing a research procurement	Exempt in part	s.22(1)(a)(ii) s.47F(1)
3.	12 October 2022	31	RE: For Procurement Review: Draft Internet 2.0 Research Proposal	Exempt in part	s.22(1)(a)(ii) s.47F(1)
4.	17 October 2022	23	FW: For Action: Intelligence Summary Contract	Exempt in part	s.22(1)(a)(ii) s.47F(1)
5.	18 October 2022	2	Procurement Enquiries & Services Details	Exempt in part	s.22(1)(a)(ii) s.47F(1)
6.	19 October 2022	11	RE: For Review and Input: Draft Research Contract (please action as soon as practicable)	Exempt in part	s.22(1)(a)(ii) s.47F(1)