



Our reference: FOIREQ24/00397

CR

By email: foi+request-11865-d10807ba@righttoknow.org.au

Freedom of Information Request – FOIREQ24/00397

Dear CR

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information request (FOI request) was received by the Office of the Australian Commissioner (OAIC) on 9 August 2024.

I am writing to inform you of my decision.

I have identified 183 documents within the scope of your request. I have made a decision to:

- grant full access to 159 documents, and
- grant access in part to 24 documents.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

I request access to the following documents under the Freedom of Information Act 1982:

1. *Operating procedures or similar documents that govern how an IC Review is conducted, including template documents and template emails.*
2. *Operating procedures or similar documents that govern how an FOI Complaint is conducted, including template documents and template emails.*

All documents should be the most up-to-date versions, without any editing markup.

Exclusions:

1. Duplicate documents
2. FOI Guidelines and other documents published on the OAIC's website (except those on the OAIC's disclosure log)
3. The FOI Act and IC Reviews
4. Emails (except email templates)
5. Documents tracking IC Reviews or FOI Complaints.

For clarity, the following is provided as guidance only on the scope and intentions of my request:

I am seeking documents similar to those released in the following FOI requests:

- FOIREQ23/00196 (excluding Document 4 as it is irrelevant to IC Reviews or FOI Complaints)
- FOIREQ2300156, including:
 - The latest version of all documents relevant to IC Reviews and FOI Complaints
 - All relevant documents listed under the 'Sample letters/guidance' column in Document 57 "IC review process"
- FOIREQ23/00111 (latest versions)
- FOIREQ24/00330, including:
 - The template email "Recent charges decision and invitation to make a revised decision"
 - The template Attachment to document 1 – Letter about charges

My intention is to access the updated versions of the above-mentioned documents, as well as any similar relevant documents not captured in the previous FOI requests.

On 13 August 2024, we sought to consult upon the scope of your request as follows:

'Operating Procedures' or 'Operating Information'	We note that your request uses the term 'operating procedures or similar documents'. We have interpreted this to have the same meaning as 'operational information' set out in section 8A of the FOI Act. 'Operational information' is defined as 'information held by the agency to assist the agency to perform or exercise [its] functions or powers', and includes 'rules, guidelines, practices and precedents' held by the agency to assist in making decisions. For the purposes of this request, we consider
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	<p><i>templates held by the OAIC to be operational information.</i></p> <p><i>That is, we interpret your request to be seeking policies, procedures and templates that govern how the OAIC processes IC reviews and FOI complaints.</i></p> <p><i>Please kindly confirm whether you agree with this interpretation of operating procedures or similar documents.'</i></p>
<p>Duplicate Provision of Documents</p>	<p><i>We note that your request expressly excludes 'FOI Guidelines and other documents published on the OAIC's website' from scope, however, <u>does not</u> exclude documents already uploaded onto the disclosure log.</i></p> <p><i>Specifically, you provide the following matter numbers by way of illustration of documents you are requesting:</i></p> <ol style="list-style-type: none"> <i>1. FOIREQ23/00111</i> <i>2. FOIREQ23/00156</i> <i>3. FOIREQ23/00196</i> <i>4. FOIREQ24/00330</i> <p><i>I note that of these requests, you were the FOI applicant in FOIREQ23/00156 and FOIREQ24/00196. This means that, in addition to these documents being uploaded onto the disclosure log and thus public information, you are already in possession of the documents located as part of this request.</i></p> <p><i>To assist in maintaining efficient practices for FOI processing, we interpret the scope of your request as excluding documents already provided to yourself, and documents already uploaded onto the disclosure log.</i></p> <p><i>This will enable the OAIC to focus on locating any updated material and avoid duplicate processing</i></p>

	<i>of requests and duplicate provision of documents.</i>
Updated Versions	<p><i>In line with the above, our understanding of your request is that you are only seeking access to updated versions, if any, of the policies, procedures and templates previously released under the following matter numbers:</i></p> <ol style="list-style-type: none"> <i>1. FOIREQ23/00111</i> <i>2. FOIREQ23/00156</i> <i>3. FOIREQ23/00196</i> <i>4. FOIREQ24/00330</i> <p><i>Please kindly confirm whether you agree with this interpretation.</i></p>

I note that on 13 August 2024, you replied with the following advice regarding scope:

I agree with your first interpretation regarding operational information.

I agree with your second interpretation regarding exclusions, on the condition that you list each document excluded in this manner and provide its location. For example: "Document ABC123 is excluded as it is available on FOIREQ12/12345 Document 47." Please also release the "Schedule of Documents" for FOIREQ23/00111. If this is not possible, documents already on the disclosure log remain within the scope of my request.

I partially agree with your third interpretation. I am seeking updated versions of the policies, procedures, and templates from the previously released documents (related to IC Review and FOI Complaints). However, I am also seeking any other similar documents (if they exist) that were not included in FOIREQ23/00111, FOIREQ23/00156, FOIREQ23/00196, and FOIREQ24/00330.

Upon assessment of the amended scope, the OAIc made a decision to process your request based on the terms of your initial request, dated 9 August 2024.

Request timeframe

Your request was made on 9 August 2024.

This means that a decision on your request is due by 9 September 2024.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to:

- grant full access to 159 documents, and
- grant access in part to 24 documents.

Searches Undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

The following line area of the OAIC conducted reasonable searches for documents relevant to your request:

- The Freedom of Information Branch

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's document holding system – Content Manager
- OAIC's email system

The following search terms were used when undertaking electronic records searches:

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request.

Reasons for decision

Material taken into account

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

- your FOI request dated 9 August 2024
- the FOI Act, in particular including sections 3, 11, 11A, 15, 22, 26, and 47E of the FOI Act

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)

Access to edited copies with irrelevant and exempt matter deleted (section 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt or irrelevant to the request.

I have determined that FOI Act exemptions apply to this material. Accordingly, the exempt material has been removed in accordance with s 22(1)(a)(i) of the FOI Act.

I have also identified the following material within the documents to be irrelevant or out of scope of your request in accordance with s 22(1)(a)(ii) of the FOI Act:

- information pertaining to IC Reviews and FOI Complaints which have been inadvertently left in the templates after use.

Accordingly, I have made an edited copy of the documents which removes this material in accordance with s 22 of the FOI Act and otherwise grants you **access in part** to the material in scope of your request.

Section 47E(d) – Proper and efficient conduct of the OAIC’s operations

In accordance with section 47E(d) of the FOI Act, I have made a decision to redact material on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC’s operations.

Paragraph 6.14-6.16 of the FOI Guidelines explains that the test “would or could reasonably be expected to”:

6.14 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

6.15 The use of the word ‘could’ is less stringent than ‘would’ and requires analysis of the reasonable expectation rather than the certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

6.16 The mere risk, allegation, possibility, or chance of prejudice does not qualify as a reasonable expectation. There must be, based on reasonable grounds, at least a real, significant or material possibility of prejudice, if they can be included without disclosing exempt material (s 26, see Part 3).

The material that I have decided is subject to conditional exemption comprises of:

- IT addresses and security credentials, and
- Direct contact details of COMBO staff.

In undertaking an assessment of this conditional exemption, I have had regard to relevant and recent AAT and Information Commissioner decisions including *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66, *Paul Farrell and Department of Home Affairs (Freedom of information) (No 2)* [2022] AICmr 49 (8 April 2022) and *Knight v Commonwealth Ombudsman* [2021] AATA 2504.

In *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66, a document was found not to be conditionally exempt under section 47E(d) of the FOI Act in circumstances where the agency argued that disclosure of the relevant material would or could reasonably be expected to have result in stakeholders declining to work with the Australian Human Rights Commission. The decision found that there was not sufficient evidence to support the conclusion that such harm would occur. Similarly in *Paul Farrell and Department of Home Affairs (Freedom of information) (No 2)* [2022] AICmr 49 (8 April 2022), whilst the material found within the documents related to the Department of Home Affairs' operations, the Commissioner determined that the Department had failed to provide sufficient evidence as to why disclosure would have a substantial and adverse effect on its operations. These decisions further reinforce the position that this provision requires a high threshold as to the substantial and adverse effect that disclosure would have on an agency's operations.

In order to determine whether disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC, I have taken into consideration the functions and activities of the OAIC.

The OAIC is an independent statutory agency within the Attorney-General's portfolio, established under the *Australian Information Commissioner Act 2010* (Cth). The OAIC comprises the Australian Information Commissioner (office currently held by Elizabeth Tydd), the Privacy Commissioner (office currently held by Carly Kind), the FOI Commissioner (office currently held by Toni Pirani), and the staff of the OAIC.

I consider that the disclosure of the material would or could reasonably be expected to have an adverse effect on the OAIC's functions.

IT Addresses and Security Credentials

The IT addresses and security credentials included in some process documentations are used to provide staff members with access to OAIC resources, to enable staff to undertake their duties. The OAIC collects and stores a range of personal and financial information about members of the public. IT addresses and security credentials contain information about the OAIC's IT system and may facilitate an adverse actor to gain access to a range of internal IT information. I consider that disclosure of this information could compromise the safety and security of the storage of the information held by the OAIC. The impact of any compromise to the safety and security of the OAIC's information systems would result in a serious adverse impact on the functions and responsibilities of the OAIC.

In *'AW' and Australian Taxation Office (Freedom of information)* [2014] AICmr 1, the then FOI Commissioner considered the decision by the Australian Taxation Office (ATO) to exempt user IDs under section 47E(d) of the FOI Act. The user IDs are used by ATO staff to access the ATO's IT system. The Commissioner found that disclosing the user IDs 'would have an adverse effect on the security of the ATO's IT systems and could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the ATO'. In a series of subsequent IC review decisions, the former Australian Information Commissioner agreed with the reasoning given by the Commissioner in 'AW' to find that user IDs used by ATO staff to access the ATO's IT system are exempt under section 47E(d) of the FOI Act.

I consider that the disclosure of the IT addresses and security credentials within the OAIC's case management system could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations. I have decided that the addresses and security credentials are conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Direct Contact Details of COMBO Staff

In order to determine whether disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the COMBO, I have taken into consideration the functions and activities of the agency.

Primarily, the COMBO is the oversight body for complaints made to Commonwealth Agencies or Departments. The COMBO works to assist to resolve complaints made by investigating the process if the agency, provider or organisation does not change their decision or offer a better explanation of the decision. The role of the COMBO is

to facilitate a genuine complaint process within the Commonwealth government, promoting accountability and procedural fairness.

I consider that the disclosure of direct contact details and last names of COMBO staff would or could reasonably be expected to have an adverse effect on COMBO's ability to effectively manage the communications it receives from the public.

The recent decision of Chief Executive Officer, Services Australia v Justin Warren [2020] AATA 4557 discusses the issue of the disclosure of public servants' names and contact details. The FOI Guidelines and the Information Commissioner's 2020 Policy Paper Disclosure of public servants' names and contact details in response to FOI requests also discuss this issue.

We consider that the disclosure of direct contact details, full names and job titles of COMBO staff contained in this bundle of documents would have a substantial adverse effect on their operations as it may circumvent the dedicated contact mediums established by the COMBO to manage contact with the public. Specifically, in light of the nature of matters the COMBO manages, we consider the disclosure of this information would have a significant impact on the COMBO's ability to effectively undertake their duties, and that this may put staff at an increased risk of abuse, harassment and intimidation.

In addition, we consider that the release of direct contact details may also adversely impact the COMBO's ability to effectively undertake their day-to-day work, as irrelevant communications would need to be directed to the appropriate area for response. This would require each impacted staff member to review communication made and make a determination as to the most appropriate line area to allocate this communication to. We consider that this would infringe upon the named staffer's ability to undertake their regular duties.

In my view, the adverse effects from the disclosure of the relevant documents at this time is more than merely an assumption and would impact upon the proper and efficient operations of the COMBO.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47E(d) of the FOI Act.

As section 47E is a conditional exemption, I am also required to consider the application of a public interest test.

My consideration of the public interest test, in respect of all the material subject to conditional exemption in this document is discussed below.

Application of the public interest test – (section 11A and 11B)

As provided above, I have considered that material within the documents is subject to conditional exemption under section 47E.

Section 11A(5) provides that where a documents is considered to be conditionally exempt, an agency **must** give the person access to those documents unless the FOI decision maker would, on balance, would be contrary to the public interest.

This means that I must balance factors for and against disclosure in light of the public interest.

In Chapter 6, the FOI Guidelines provide the following guidance:

- 6.4 *There is a **single public interest test to apply to each of the conditional exemptions**. This public interest test is defined to include certain factors that must be taken into account where relevant, and some factors which must not be taken into account.*
- 6.5 *The public interest test is considered to be:*
- *something that is of serious concern or benefit to the public, **not merely of individual interest***
 - ***not something of interest to the public, but in the public interest***
 - *not a static concept, where it lies in a particular matter will often depend on a balancing of interests*
 - *necessarily broad and non-specific, and*
 - *related to matters of common concern or relevance to all members of the public, or a substantial section of the public.*
- 6.6 *It is not necessary for a matter to be in the interest of the public as a whole. It may be sufficient that the matter is in the interest of a section of the public bounded by geography or another characteristic that depends on the particular situation. A matter of public interest or benefit to an individual or small group of people may also be a matter of general public interest.*

In the AAT case of *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269, at paragraph 133 of the Decision Deputy President Forge explained that:

... the time at which I make my decision for section 11A(5) requires access to be given to a conditionally exempt document “*at a particular time*” unless doing so is, on balance, contrary to the public interest. Where the balance lies may vary from

time to time for it is affected not only by factors peculiar to the particular information in the documents but by factors external to them.

The FOI Act sets out four factors favouring access, which must be considered if relevant. Of these factors, we consider the following to be relevant:

- promote the objects of the FOI Act.

In addition to these factors favouring disclosure, I have also considered that the following factor in favour of disclosure would apply:

- disclosure would enhance scrutiny around government decision making.

Section 11B(4) of the FOI Act provides factors which are not to be taken into account in making a decision, which I have had regard to. Section 11B does not further prescribe the factors against disclosure to be considered. In considering the documents subject to this request, I consider that the following factors do not favour disclosure:

- disclosure would have an adverse effect on the OAIC's proper and efficient operations by adversely impacting upon the OAIC's IT security, and
- disclosure of direct contact details of COMBO staff would or could reasonably be expected to have a substantial adverse effect on their operations.

Whilst the release of this information may further facilitate transparency within government, I have placed greater weight on the protection of the OAICs IT security systems, role of the COMBO, and the privacy of third parties.

I consider that there is little public interest in the disclosure of internal IT security credentials which do not relate to the substance of the material with which the file relates. This is because the IT security credentials are for internal use to provide OAIC staff with access to resources which enable them to effectively undertake their decision-making duties. This information does not impact or otherwise relate to the file which has been requested. All other material stored on the file has been provided. I also consider there to be little public interest in the disclosure of internal IT addresses which do not relate to the substance of the material to which the file relates. This is because the IT address is merely for internal use in back-end systems, and do not impact or otherwise relate to the file which has been requested. I consider the protection of the OAIC's information security management to be of great public interest. This is because, as the regulator of the Privacy Act 1988 (Cth) (Privacy Act) and its implementation across Commonwealth Government agencies, the OAIC must emulate best practice, and cannot be in breach of the very instrument it regulates. To act in a manner inconsistent with the purpose of the Privacy Act

would be contrary to the public interest and diminish the OAIC's ability to effectively manage privacy across other Commonwealth agencies and private entities.

In relation to direct contact details of COMBO staff, I consider there to be a significant public interest in facilitating the proper and efficient conduct of the COMBO due to the importance of the work they engage with for the Australian community at large. COMBO has several responsibilities pertinent to overseeing the effectiveness of the Commonwealth government at large, and enabling their staffers to work efficiently will serve the public interest more so than releasing this information.

In addition, I consider that the release of the redacted material does not impact the substance of the material within the documents provided. All other relevant material has been released; the removal of this information does not alter the information within the document. I do not consider the release of this information would serve to further transparency or accountability in decision-making, as the substance of the material has been released. In addition, and as highlighted in *Chief Executive Officer, Services Australia v Justin Warren* [2020] AATA 4557 at paragraphs [70] – [83], the considerations of 'accountability in decision-making' and 'transparency' apply most appropriately at an agency or departmental level, and not necessarily on an individual public servant level.

As such, I consider that there is little public interest in the disclosure of direct contact details, last names and job titles of COMBO staff and internal IT addresses and security credentials related to the back-end processing of a file. I consider that the disclosure of this material would likely impact upon both COMBO's and the OAIC's ability to effectively and efficiently manage their existing workload, and protect the OAIC's network security, respectively.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Other Matters

We note that you sought:

All documents should be the most up-to-date versions, without any editing markup.

Please note that some operating procedures/documents may be the most up to date versions, however, still contain edits and/or markups.

the OAIC has taken a pro-disclosure approach and made a decision to release these documents to you for completeness. Documents with editing mark up may include

review comments or appear incomplete. The OAIC has made this decision in the spirit of pro-disclosure.

Disclosure log decision

Section 11C of the FOI Act requires agencies to publish online document released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of document

The documents are enclosed for release.

Please see the following page for information about your review rights.

Yours sincerely,

Tahlia Pelaccia
Lawyer

9 September 2024

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact foi@oaic.gov.au. More information is available on the Access our information page on our website.