



13 September 2024

Oliver Smith (Right to Know)

**BY EMAIL: [foi+request-11884-d5b60f1c@righttoknow.org.au](mailto:foi+request-11884-d5b60f1c@righttoknow.org.au)**

**In reply please quote:**

FOI Request: FA 24/08/00810

File Number: FA24/08/00810

Dear Oliver Smith (Right to Know)

**Freedom of Information (FOI) request – Decision**

On 13 August 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).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following documents:

*Under the FOI Act, please provide a copy of the brief titled "Possible Ministerial Intervention - Section 48B of the Migration Act <redacted>" sent to the Minister for Immigration's office on 04/04/2024 with the PDR number: MS24-000404.*

**2 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.

**3 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)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

## 4 Documents in scope of request

The Department has identified five (5) documents as falling within the scope of your request. These documents were in the possession of the Department on 13 August 2024 when your request was received.

The Department is not in a position to release any personal information that we may or may not hold in relation to any particular individual unless they have consented to the release of their personal information in writing.

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

## 5 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 one document in full
- Release two documents in part with deletions
- Exempt two documents in full from disclosure

## 6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

### 6.1 *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 14 August 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 document 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 document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

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

### 6.2 *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*).

You have requested access to information and/or documents related to a particular individual. I consider that disclosure of any information/documents that may be held by the Department would disclose personal information relating to that individual.

The information marked 's47F' in the documents would disclose personal information relating to a third party. 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 party 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 individual concerned is 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 party would be relevant to the broader scope of your request, as you are seeking access to Ministerial Submission MS24-000404, rather than information which wholly relates to one individual. You have not provided any evidence to indicate that you have the consent of that particular individual to access their personal information.

It is not possible for the Department to consult with that particular individual as to whether they consent to the release of their personal information. I consider that any release of information without their express consent would be contrary to the *Privacy Act*, and would therefore be an unreasonable 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 an individual.

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.

### 6.3 *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 not seem to have a general characteristic of public importance. The matter has a limited scope and, in my view, would be of interest to a very narrow section of the public.
- 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.

## **7 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.

## **8 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](#).

## 9 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](#).

## 10 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](mailto:foi@homeaffairs.gov.au).

Yours sincerely



Jill Ogden  
FOI Delegate  
Department of Home Affairs  
13 September 2024

ATTACHMENT A

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

FOI request: FA 24/08/00810

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No.	Date of document	No. of pages	Description	Decision on release	
1.	3 April 2024	9	MS24-000404	Release in Part	s.22(1)(a)(ii) s.47F(1)
1.1	11 April 2024	1	Attachment A- Decision Instrument for section 48B of the Act	Release in Part	s.47F(1)
1.2	11 April 2024	1	Attachment B - Statement to Parliament under section 48B	Release in Full	Release in Full
1.3	6 February 2204	2	Attachment C - Immigration History	Exempt in Full	s.47F(1)
1.4	4 March 2024	7	Attachment D- Pre Removal Clearance	Exempt in Full	s.47F(1)