



Official

Freedom of Information (FOI) request

Internal Review decision and reasons under section 54 of the *Freedom of Information Act 1982*

Reference: FOI/2024/316IR

To: Mr Trav S

Email: foi+request-12075-36c06cd1@righttoknow.org.au

cc: Office of the Australian Information Commissioner

foidr@oaic.gov.au

Dear Mr Trav S

I refer to your email requesting an internal review of an access refusal decision made under the *Freedom of Information Act 1982* (the FOI Act) by the Department of the Prime Minister and Cabinet (the Department) dated 21 November 2024.

Section 54(2) of the FOI Act allows an applicant to apply for internal review of a decision refusing to give access to a document in accordance with the request.

Scope of internal review

On 22 November 2024, you set out your request for review in the following terms (extract):

I request that the internal review reconsider both the application of section 47F exemptions and the failure to address Point 4 of my request. Specifically:

- a. Reconsider the section 47F exemptions applied to Documents 1–5 in the schedule of documents, with a view to releasing the withheld information in full or with minimal redaction.*
- b. Provide a response to Point 4 of my request, or an explanation if the requested document does not exist. If the requested document cannot be located, the Department should consider its obligations under section 17(1) of the FOI Act to produce a document capable of meeting the terms of my request.*

c. Given that the Department now acknowledges HOSMs were awarded to commercial security contractors, I further request that the internal review reevaluate the public interest considerations, ensuring that this critical fact is appropriately accounted for in the decision-making process.

Authorised decision-maker

The FOI Act provides an agency must arrange for a person (other than the person who made the original decision) to review the decision.¹

I am authorised to make this review decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Internal review decision

After careful consideration I have decided to affirm the primary decision (for the reasons set out by the primary decision-maker) to grant access in part with certain material exempt from disclosure under section 47F (Personal Privacy) of the FOI Act.

In reaching my decision I referred to the following:

- the terms of your request for internal review;
- the original FOI request;
- a review of document searches undertaken by the Department in the original FOI request;
- the FOI Act; and
- the Guidelines issued by the Information Commissioner (the FOI Guidelines).²

Background

Original FOI request

On 23 September 2024, you made a request under the FOI Act to the Department, and on the same date, revised the terms of your request to seek access to the following:

1. A copy of each 'HOSM Application Form' the Department collected from each prospective awardee serving with the 'Australian contingent to the humanitarian relief operation of GE Infrastructure, Water & Process Technologies'.

2. A copy of the Department's correspondence to the Governor-General recommending any award of the HOSM or clasp to members of the 'Australian contingent to the humanitarian relief operation of GE Infrastructure, Water & Process Technologies'.

¹ Subsection 54C(2) of the FOI Act.

² Subsection 93A of the FOI Act.

3. A document recording the number of 'HOSM Application Forms' the Department collected from prospective awardees claiming to have served with the 'Australian contingent to the humanitarian relief operation of GE Infrastructure, Water & Process Technologies'.

4. A document recording the number of persons the Department recommended the Governor-General award the HOSM in recognition of their service with the 'Australian contingent to the humanitarian relief operation of GE Infrastructure, Water & Process Technologies'.

Summary of original decision

The Department advised in its original decision that it had identified 5 documents that fall within the scope of your request (the requested documents).

Access to the requested documents was refused in part, with material exempted under s 47F of the FOI Act, on the ground it contained personal information and release is, on balance, against the public interest. Irrelevant material was deleted under section 22 of the FOI Act.

Reasons for Internal Review Decision

Section 47F – Conditional Exemption – Personal privacy

You sought on internal review for the Department to consider whether the personal information exemption had been effectively applied and whether any further information could be released. As outlined in the primary decision, subsection 47F(1) of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person...

Personal information

For the purposes of the FOI Act, I note that 'personal information' has the same meaning as in the [Privacy Act 1988](#) (the Privacy Act).

I have reviewed the requested documents and confirm that Documents 1 and 3, by their nature, constitute personal information in full. Documents 2, 4 and 5 have been appropriately redacted with personal information exempt under section 47F.

Unreasonable disclosure

Section 47F contains an unreasonableness test which requires the consideration of all relevant circumstances and a balancing of the public interest in disclosure of the documents against the public interest in protecting personal privacy.³

³ Re Chandra and Minister for Immigration and Ethnic Affairs (1984) 6 ALN N257.

Having identified third party 'personal information' within the document, I have considered the provisions of subsection 47F(2), which require me to have regard to the following matters when determining whether disclosure of the personal information would be unreasonable:

- the extent to which the information is well known;
- whether the person is known to be associated with the matters in the document
- the availability of the information from a public source; and
- any other matters relevant, for example if it is reasonable to suspect the person would expect their information to be released as part of an FOI request.

I have reviewed the public interest factors for and against release as reasoned by the primary decision-maker and affirm the findings of the primary decision maker. Further, I consider that there is a prevailing public interest in protecting the privacy of individuals whose information has been obtained by the Department for the purpose of deliberating on honours for meritorious actions. To release the personal information of honours candidates would unconscionably offend the public interest inherent in providing a confidential process for the consideration of the actions of Australians for honours and award.

Having regard to the above matters, and the fact that the third parties have not provided consent to the release of their personal information, I affirm the primary decision maker's finding that release of the personal information would be unreasonable in the circumstances.

Public Interest Test

Where a document contains conditionally exempt material, it must nevertheless be released unless access to the document at that time would, on balance, be contrary to the public interest.

I note that the FOI Guidelines state that a decision-maker may need to consider one or more factors twice, once to determine unreasonableness and again in assessing the public interest test.⁴

Subsection 11B(3) of the FOI Act sets out four factors favouring access to a document. The original decision held that the disclosure of the documents may promote the objects of the Act. I am satisfied that this factor remains current despite the passage of time.

The FOI Act does not list any factors weighing against access. The FOI Guidelines state that these factors will depend on the circumstances and provides a non-exclusive list of factors against disclosure.⁵

I have considered the public interest factors as laid out in the primary decisions with which I agree. Further, I consider that there is a prevailing public interest in protecting the privacy of individuals who are considered for honours and award.

⁴ FOI Guidelines, [6.133].

⁵ FOI Guidelines, [6.233].

Document recording number of persons recommended for HOSM

Your request for internal review sought that the Department specifically address your request for a document listing 'the number of people recommended by the Department [for] HOSM in recognition of their service with the Australian contingent to the humanitarian relief operation of GE Infrastructure, Water & Process Technologies.'

Document 5 is a document which meets these terms of your request, however as detailed in the primary decision and my reasoning above, the document in its entirety is exempt as it contains personal information, the disclosure of which is contrary to the public interest.

Review rights

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

Information Commissioner Review

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 at

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/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. We may be able to rectify the problem. 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 on the Office of the Australian Information Commissioner at

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

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

Yours sincerely

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a horizontal line extending to the right.

Ashleigh McDonald
Acting First Assistant Secretary
Government Division
Department of the Prime Minister and Cabinet

23 December 2024