



31 October 2024

Our ref: FOI2024/66

CR

Via Email: foi+request-12114-28bbd936@righttoknow.org.au

Dear CR

FREEDOM OF INFORMATION REQUEST – DECISION ON ACCESS

I refer to your request of 1 October 2024, under which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

1. *The most recent 30 notices of charges issued to FOI applicants.*

For each of these 30 requests, if applicable, please also provide:

2. *Any subsequent decisions regarding charges following applicant contention.*

3. *Any subsequent decisions regarding charges following internal or external review.*

Please exclude the following information:

i) *Personal information of FOI applicants, including supporting evidence or details of personal circumstances in a financial hardship contention.*

ii) *Emails that attached the charges notices/decisions letters.*

The time period for the request is from 1 July 2022 to 1 October 2024.

The underlined text above represents the amendments you made to the scope of your request on 8 October 2024 following consultation with CSIRO.

On 23 October 2024, you purported to clarify the scope of your request to include preliminary charge notices and decisions of charges sent in the body of an email (as opposed to an email attachment), as well as the applicant's 'contention reasons' (which I took to mean reasons for contending that a charge should be reduced or waived relating to any charge notices sent in the body of an email). In my view, this clarification would broaden the scope of your request and require more searches. As the request came so late in the statutory processing time, we would ordinarily require you to submit a new FOI request. However, our inspection of the relevant files in the time period revealed that CSIRO did not issue any charge notices or decisions of charges in the body of emails – that is, all such notices and decisions were sent by attachments and already captured by your request as it stood on 8 October 2024. Accordingly, your clarification of 23 October 2024 has not had an impact on the outcome of your request.

Decision maker

I am an authorised decision maker under section 23 of the FOI Act. This letter sets out my decision and reasons for the decision in relation to your application.

Documents identified

I have identified 13 documents, comprised of 60 pages, falling within the scope of your FOI request.

Decision

I have decided to release seven of the documents in full, with redactions only applied to material that was out of scope or irrelevant to your request.

This redacted material either contains the personal information of the FOI applicant, or does not relate in any way to the issue of charges (e.g. it contains the substantive decision or reasoning of the FOI request). The material redacted for this purpose is clearly indicated in the documents as '**s 22 – Excluded from scope by applicant**', as well as in the Document Schedule at **Attachment B**.

I have decided to release the remaining six documents in part, with redactions applied to material which I decided to be subject to the following conditional exemptions:

- **Section 47E(c) – Certain operations of agencies (assessment and management of personnel)**
- **Section 47F – Personal privacy**

My reasons for applying these exemptions are set out below, while the documents to which each of these exemptions have been applied are indicated in the Document Schedule at **Attachment B** to this decision.

Materials taken into account

In making this decision, I considered:

- the terms of your FOI request and subsequent amendments and clarifications;
- the content of the documents in issue;
- the relevant provisions of the FOI Act;
- guidelines issued by the Office of the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines); and
- relevant case law.

Reasons for decision

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act provides:

Scope

(1) This section applies if:

(a) an agency or Minister decides:

(i) to refuse to give access to an exempt document; or

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and

(b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:

- (i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*
- (ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*
- (c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*
 - (i) *the nature and extent of the modification; and*
 - (ii) *the resources available to modify the document; and*
- (d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

Access to edited copy

(2) *The agency or Minister must:*

- (a) *prepare the edited copy as mentioned in paragraph (1)(b); and*
- (b) *give the applicant access to the edited copy.*

[...]

I have decided that some of the material in the documents, as identified in the Document Schedule and in the documents themselves, is irrelevant to your request on the basis that it:

- contains the personal information (including reasons for claiming hardship) of the FOI applicant to which it relates, which you expressly excluded from the scope of your request; or
- does not relate in any material way to the issue of charges (including charge notices, decisions, reduction or waiver contentions or reasons), and instead relates to other parts of the FOI request (such as the substantive FOI decision, exemptions and reasons for applying them),

and should therefore be removed under section 22.

Where I considered there to be material which might be indirectly relevant to the issue of charges (such as processing timeframes), I did not redact that material.

As it was reasonably practicable for me to prepare an edited copy of the documents with the irrelevant and exempt material deleted such that it could be released to you, and it was not apparent to me that you would decline access to this edited copy, I have done so.

Section 47E(c) – Certain operations of agencies (assessment and management of personnel)

Certain material in documents 4, 6 and 7 identifies certain CSIRO staff members in connection with those FOI requests. I first considered whether these details could (and should) be redacted under s 22 of the FOI Act on the basis that they amount to personal information. However, as you only expressly excluded the personal information of the FOI *applicants*, I decided that I could not redact them based on this exclusion. Instead, I applied the conditional exemption in s 47E(c) of the FOI Act.

Section 47E(c) provides that a document is conditionally exempt where disclosure would or could be reasonably expected to have a substantial adverse effect on the management or assessment of personnel by an agency.

The material in question contains statements or inferences made by the FOI applicants regarding the performance or purported activities of those CSIRO staff members. If disclosed to the public at large (such as through this FOI request), such information would likely have work health and safety risks staff, caused by inappropriate contact or harassment, as well as creating a reluctance in staff to undertake their duties and engage with the FOI process in future. The disclosure would impact detrimentally on staff morale with a loss of trust in management to protect their wellbeing in the workplace.

I am therefore satisfied that parts of documents 4, 6 and 7 are conditionally exempt under s 47E(c).

The public interest test: s 47E(c)

In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- whether access would promote the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (s 3(2)(b) FOI Act);
- whether access would inform debate on a matter of public importance; and
- whether access would promote effective oversight of public expenditure.

For all instances where I have applied s 47E(c), I formed the view that disclosure would do little to further the above factors. In particular, I note that your FOI request is essentially a request regarding the procedure and processing of *other* FOI requests (the substance of which was already considered and decided in the course of CSIRO processing those FOI requests). The public interest in *your* FOI request appears to lie in inspecting CSIRO's handling of previous FOI requests in respect of charges (including scrutiny of CSIRO's FOI processing and oversight of public expenditure). In my view, the very limited material that I have exempted under s 47E(c) would not further those objectives.

Against disclosure, I have taken into account the public interest in maintaining the ability for CSIRO to engage with information which identifies CSIRO staff members to ensure that employees' personal privacy is protected, and that any employees can feel confident in their work health and safety such that they continue to engage with their workplace duties (including engaging with CSIRO's FOI processes).

In respect of the material conditionally exempt under s 47E(c), I have formed the view that disclosure would, on balance, be contrary to the public interest as outlined above. Accordingly, the public interest test is satisfied, and the material which I conditionally exempted under s 47E(c) is exempt from disclosure under the FOI Act.

Section 47F – Personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt from disclosure to the extent that it contains personal information the disclosure of which would be unreasonable.

'Personal information' is defined in s 4 of the FOI Act to include information or an opinion, whether true or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

I am satisfied that certain limited material in document 8, 9 and 10 is personal information in the relevant sense. The material in question relates to third-party individuals (i.e. non-CSIRO staff), identifying them by name, and includes personal contact details and employment/professional information for those individuals.

In considering whether disclosure would be unreasonable, s 47F(2) requires me to take into account:

- 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 matter I consider relevant.

The Guidelines provide further guidance on determining unreasonableness, including a consideration of all of the circumstances, the nature of the information, the circumstances in which it was obtained, the likelihood that the individual would not wish it to be disclosed, and the current relevance of the information.

Taking all of the above into account, given the nature of the subject-matter of the documents, it is my view that the information in question is not well known or easily accessible by the public, and the relevant individuals would likely not want their personal information to be publicly disclosed. In circumstances where

consultation with the individuals would not have been reasonably practicable, I consider it particularly important to err on the side of caution in respect of disclosure.

I have considered whether the disclosure of the personal information in question would shed light on the workings of CSIRO or enhance accountability or transparency. Given the nature of the information, release would have no such effect.

Weighing all these things up, I have concluded that disclosure of other individuals' personal information in the documents would be unreasonable. I am therefore satisfied that the relevant material is conditionally exempt.

The public interest test: s 47F

Conditionally exempt matter must be released unless, in the circumstances, access to that document would, on balance, be contrary to the public interest under s 11A(5) of the FOI Act. As the Guidelines state at 6.8 - 6.9:

The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered.

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

In balancing the public interest in this case, I have considered the following factors in favour of disclosure:

- whether access would promote the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (s 3(2)(b) FOI Act);
- whether access would inform debate on a matter of public importance; and
- whether access would promote effective oversight of public expenditure.

For all instances where I have applied s 47F, I have formed the view that disclosure would do little to further the above factors. As discussed in respect of the application of the public interest test to the s 47E(c) exempt material above, the public interest in your FOI request appears to lie in CSIRO's application, process and handling of charges in previous FOI requests. In my view, the very limited material that I have exempted under s 47F would not further those objectives. By contrast the interference with the privacy of the individuals in question would be unreasonable, as outlined above.

Accordingly, I have concluded that disclosure would, on balance, be contrary to the public interest, and the material which I conditionally exempted under s 47F is exempt from disclosure under the FOI Act.

Release of documents

The edited copy of the documents which I have decided to release to you will accompany this decision letter.

Rights of Review

In accordance with section 26(1)(c) of the FOI Act, a statement setting out your rights of review under the Act is at Attachment A.

Yours sincerely



Oli Shepherd
Senior Legal Counsel

Review rights

You are entitled to seek review of this decision.

Internal Review

Firstly, under section 54 of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:

30 days of you receiving this notice; or 15 days of you receiving the documents to which you have been granted access.

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI@csiro.au

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

External review by the Australian Information Commissioner

Alternatively, under 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Information Commissioner's website www.oaic.gov.au.

You can contact the Information Commissioner to request a review of a decision online using the link [Contact us | OAIC](#) or by writing to the Information Commissioner at:

GPO Box 2999
Canberra ACT 2601

Complaints to Ombudsman or Information Commissioner

You may complain to either the Commonwealth Ombudsman or the Information Commissioner about action taken by CSIRO in relation to the application. The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

Your enquiries to the Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Online via link: [Contact us](#) | [OAIC](#)

There is no particular form required to make a complaint to the Ombudsman or the Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify CSIRO as the relevant agency.