



Australian Government
Attorney-General's Department

Our ref: FOI24/513; CM24/28893

13 December 2024

Tyler

By email: foi+request-12181-196a1a6f@righttoknow.org.au

Dear Tyler

Freedom of Information Request FOI24/513 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 18 October 2024, you requested access to:

- documents that were submitted to the Governor-General for approval of appointment of Stephen Gageler AC as (a) Solicitor-General in 2008, (b) Justice of the High Court in 2012, (c) Chief Justice of the High Court in 2023;
- documents indicating the Governor-General's approval of the above appointments (including, as Justice (2012) and Chief Justice (2023) of the High Court, any commission of appointment that may have been issued).

On 31 October 2024, the department acknowledged your request and sought further clarification of its scope. The department provided you with links to documents that had previously been released under FOI and which related to part two of your scope, and therefore requested you withdraw this part of your request.

The same day you responded:

IF-- Part One of the request (i.e. "documents that were submitted to the Governor-General for approval of appointment of Stephen Gageler AC as (a) Solicitor-General in 2008, (b) Justice of the High Court in 2012, (c) Chief Justice of the High Court in 2023") covers both [1] the documents as submitted to the Governor-General and [2] the Governor-General's indication of approval (e.g. by way of signature etc.),

then my interest is just for Part One of the request. and if so, there will be no need to further consider or for me to pursue Part Two of the request because of the information that you so helpfully mentioned..

On 7 November 2024, the department confirmed only part one of your request was being processed. The department also sought a 30-day extension of time under section 15AA of the FOI Act to process your

request, and sought your agreement to exclude certain material from your request. You responded the same day agreeing to the department's extension of time request.

A decision in relation to your request is due on 17 December 2024.

My decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

I have identified 3 documents that fall within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents and by arranging for comprehensive searches of relevant departmental electronic and hard copy holdings.

In making my decision regarding access to the relevant documents, I have taken the following material into account:

- the terms of your request
- the content of the documents identified as within scope of your request
- the provisions of the FOI Act
- the views of a third party consulted by the department under s 27A, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines).

I have decided to grant access to one document in full and two documents in part with deletion of material which may be regarded as irrelevant to your request under s 22(1) of the FOI Act, and is exempt pursuant to s 47F of the FOI Act.

Additional information

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

The schedule of documents at **Attachment B** sets out brief information about each document within the scope of your request and my decision in relation to access to each of those documents.

The statement of reasons at **Attachment C** sets out the reasons for my decision to refuse access to certain material to which you have requested access.

The documents to which I have decided to grant full or partial access under the FOI Act are at **Attachment D**.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Rachel, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Jess Hockings
Director
Freedom of Information and Privacy

Attachments

- Attachment A: Review rights
- Attachment B: Schedule of documents
- Attachment C: Statement of reasons
- Attachment D: Documents



Australian Government
Attorney-General's Department

Attachment A – Your review rights

If you disagree with my decision, you may ask for an internal review or Information Commissioner review. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

You may apply for an internal review of my decision within 30 days of receiving this letter. Your request for internal review must be in writing, and should provide reasons why you believe the review is necessary. You may apply by emailing foi@ag.gov.au or by post to:

Director, Freedom of Information and Privacy Section
Office of Corporate Counsel
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Another officer will make a new decision on your request within 30 days of receiving your request for internal review. If you are unhappy with the internal review decision, you may ask for an information Commissioner review.

Information Commissioner review

Information Commissioner review requests must be submitted within 60 days of receiving this letter. Your request should include your contact details, a copy of my decision, and the reasons why you disagree with my decision. You can apply in one of the following ways:

Online: [OAIC Web Form](#)

Email: foidr@oaic.gov.au

Mail: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001.

More information about Information Commissioner review is available at:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>

FOI Complaints

If you are concerned about how we handled your FOI request, please let us know what we could have done better, as we may be able to rectify the situation. If you are not satisfied with our response, you can make a complaint to the Information Commissioner. Your complaint must be in writing, and can be lodged in one of the following ways:

Online: [OAIC Web Form](#)

Email: foidr@oaic.gov.au

Mail: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001.

More information about Freedom of Information complaints is available at:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints>



Attachment B - Schedule of documents - Freedom of Information Request FOI24/513

Doc no.	Date	No. pgs	Description	Access decision	Exemption/s applied
1	30 May 2008	1	Appointment of Solicitor-General	Grant access in full	Nil
2	21 August 2012	6	High Court appointment	Grant access in part	Section 22(1): Irrelevant material Section 47F(1): Public interest conditional exemption - Personal Privacy
3	22 August 2023	7	High Court appointment	Grant access in part	Section 22(1): Irrelevant material Section 47F(1): Public interest conditional exemption - Personal Privacy



Attachment C - Statement of reasons - FOI24/513

This document, when read in conjunction with the schedule of documents at **Attachment B**, provides information about the reasons I have decided not to disclose certain material to you.

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

Section 22 of the FOI Act provides that if an agency decides to give access to a document that would disclose information that would reasonably be regarded as irrelevant to the request, and it is possible for the agency to prepare a copy (an *edited copy*) of the document, modified by deletions, the agency must prepare the edited copy and give the applicant access to it.

Having regard to the particular content of the documents for your request, I decided that material not concerning the requested appointments of Stephen Gageler AC and duplicate documents are irrelevant to your request. I considered it likely that you would also agree that this information is irrelevant to your request and have deleted this material under s 22 of the FOI Act.

Public interest conditional exemptions

An agency or minister can refuse access to a document or part of a document that is conditionally exempt from disclosure under Division 3 of Part IV of the FOI Act. The document for your request which is conditionally exempt under Division 3 relates to personal privacy (s 47F).

Where a document is assessed as conditionally exempt, it is only exempt from disclosure if disclosure would, on balance, be contrary to the public interest. The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making. My reasoning in regard to the public interest factors are set out below.

A single public interest test applies to each conditional exemption. This public interest test includes certain factors that *must* be taken into account where relevant, and other factors which *must not* be taken into account. My reasoning in regard to the public interest factors are set out below.

Section 47F: Public interest conditional exemption—personal privacy

Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person. For the purposes of the FOI Act, personal information is defined as: 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.

In deciding whether to conditionally exempt the personal information described above, I had regard to the 'unreasonableness' threshold test outlined in paragraph 6.127 of the Guidelines. I also had regard to the factors set out in s 47F(2) of the FOI Act:

- (a) the extent to which the information is well known;
- (b) whether the people to whom the information relates are known to be (or to have been) associated with the matters dealt with in the document;

- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency considers relevant.

Documents 2 and 3 contain personal information which is not readily publicly available through online searches, specifically the name and signature of the Secretary to the Federal Executive Council and the residential address of Stephen Gageler AC. I further note that in response to consultation the third party concerned objected to disclosure of their residential address.

I am satisfied that the personal information about the relevant private individuals is not otherwise publicly available and disclosure of this information would be unreasonable as it could be used for improper purposes including identity theft. I am satisfied that the parties involved may reasonably object to the release of their personal information.

The FOI Act does not control or restrict the subsequent use or dissemination of information disclosed. Hence, I consider that disclosure could reasonably be expected to cause distress and harm to the person concerned.

Section 11A(5): Public interest test

Access to a conditionally exempt document must generally be given unless doing so would be contrary to the public interest. The Guidelines issued by the OAIC provide at paragraph 6.5 that 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 interest of the public,
- 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.

In deciding whether to disclose conditionally exempt material, I have considered the factors favouring access set out in s 11B(3) of the FOI Act. I have not taken into account the irrelevant factors listed under s 11B(4) of the FOI Act.

Of the factors favouring disclosure, I consider that release of the conditionally exempt material identified for your request would promote the objects of the FOI Act.

The FOI Act does not list any specific factors weighing against disclosure. However, I have considered the non-exhaustive list of factors against disclosure in the Guidelines as well as the particular circumstances relevant to the conditionally exempt material.

I consider the release of the conditionally exempt material could, as the case may be, reasonably be expected to prejudice the protection of an individual's right to privacy, and the interests of an individual.

On balance, I consider the factors against disclosure outweigh the factors favouring access and that providing access to the conditionally exempt material identified for your request would be contrary to the public interest.