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Freedom of Information (FOI) request

Notice of Decision

Reference: FOI/2024/345

Mr Alan Cole

By email: foi+request-12217-e07f77f8@righttoknow.org.au

Dear Mr Cole,

I refer to your request dated 24 October 2024 to the Department of the Prime Minister and Cabinet, 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.

Scope of request

You requested the following:

- 1. List of the entire delegation accompanying King Charles and Queen Camilla on their trip to Australia including support staff. If planning to exclude peoples names then the peoples job titles only. I am not requesting information on any security personnel.*
- 2. The guest list for the King and Queen's reception at Parliament house in Canberra. Again just people's job titles if you plan to withhold names*
- 3. List of the entire delegation accompanying Chinese prime minister Li Qiang including support staff on his trip to Australia in June 2024. Again peoples job titles if you plan to exclude names*

Authorised decision-maker

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

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Material taken into account

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to your request
- the FOI Act
- the Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the Guidelines)
- the views of a third party consulted by the Department under section 15(7) of the FOI Act

Documents in scope of request

The Department has identified 3 documents that fall within the scope of your request.

These documents are set out in the Schedule of Documents at **Attachment A**.

Decision

I have decided to grant access in part, with exempt material deleted, on the basis that the documents contain information exempt under:

- section 33 (national security, defence or international relations) and
- section 47F (personal privacy)

Reason for decision

My findings of fact and reasons for deciding that certain information is exempt are set out below.

1. Section 33 - Documents affecting national security, defence or international relations

Section 33(a)(iii) of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

- (i) The security of the Commonwealth;*
- (ii) The defence of the Commonwealth; or*
- (iii) the international relations of the Commonwealth*

The Guidelines explain:

The test 'would or could reasonably be expected' ... requires a decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

The use of the word 'could' in this qualification is less stringent than 'would' and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring.¹

Furthermore:

the phrase 'international relations', means the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.²

'Damage' for the purpose of this exemption is not confined to monetary or physical loss or damage, but may be intangible.³

The Guidelines acknowledge the possibility that disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in the future.⁴

Each of the documents requested contain information pertaining to a foreign entity. Document 1 and 3 include a list of the delegates who visited Australia in October and June 2024 respectively, while Document 2 is a list containing information relating to invitees to a Parliamentary Reception held in October 2024.

Document 1:

Document 1 is a document containing information communicated from a foreign entity. In the circumstances the Guidelines relevantly address the application of the section 33 to this type of document:

... the AAT has accepted evidence of a long-standing convention and practice of confidentiality with respect to correspondence between the Australian Government and the Queen [the confidentiality convention]. This convention preserves the effective functioning of the relationship between the Commonwealth of Australia and the Monarch, including relations with the Queen personally and members of the Royal Household, including the Queen's private secretary. In these circumstances, the AAT

¹ Paragraphs 5.15 – 5.18 of the Guidelines

² Paragraph 5.39 of the Guidelines

³ Paragraph 5.25 of the Guidelines

⁴ Paragraph 5.42 of the Guidelines

*found that disclosure of letters between Australian Prime Ministers and the Queen could reasonably be expected to damage the international relations of the Commonwealth.*⁵

Further, I have had regard to the views of the third party as cited in the Administrative Appeals Tribunal decision in *Secretary, Department of Prime Minister and Cabinet and Summers (Freedom of information)*,⁶ in particular:

- *The expectation on the part of the Monarch and the Royal Household that the confidentiality convention will be strictly observed;*
- *Disclosure would breach the confidentiality convention and be viewed as such; and*
- *Damage which could reasonably be expected to flow from disclosure of the Letters for Australia's relationship with the Monarch and Royal Household.*

The Department has consulted the Royal Household regarding their information in document 1 and they confirmed their position, as set out above, has not changed.

I am satisfied that the disclosure of document 1 would reasonably be expected to damage the international relations of the Commonwealth.

Documents 2 and 3:

Document 2 contains information relating to invitees to the Parliamentary Reception who are associated with foreign entities. Document 3 is a list of foreign delegates who visited Australia in June 2024.

The information in these documents were communicated to the Australian Government with no expectation that the information would be disclosed to the public in any manner. The disclosure of this material will undermine Australia's ability to maintain strong diplomatic relations with other countries, as it will call into question whether foreign governments will perceive Australia to be a 'trustworthy' recipient of confidential information.

For the reasons given above, I am satisfied the documents contain information that would reasonably be expected to cause damage to the international relations of the Commonwealth if it is disclosed.

I am satisfied that parts of Document 2 and all of Document 3 is exempt from release under section 33(a)(iii) of the FOI Act.

2. Section 47F – Public interest conditional exemption - Personal privacy

Section 47F(1) of the FOI Act provides:

⁵ 5.41 of the Guidelines

⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2019/5537.html>

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

Personal information has the same meaning as set out in section 6 of the *Privacy Act 1988*.

Document 2 contains the personal information of a large number of third parties for which it is not reasonably practicable to consult with each and every one of them, and where they may not have reasonably been known to have been in attendance at the event.

Furthermore I consider that it is unreasonable to disclose any guest of an invited party. To ensure the identities of the guests of invitees remain undisclosed, I have decided to exempt from disclosure any content within the two last columns of the report, to identify who may or may not have had a guest may in and of itself lead to the identification of those guests who attended the event..

I have taken into account that it may be reasonable to disclose the names of some invitees where they are reasonably known to have been in attendance through media reporting. These names are being released as part of my decision.

In considering whether the release of other invitees and any guests' identities within the document would amount to an unreasonable disclosure of personal information (section 47F(2) of the FOI Act) I am satisfied of the following:

- the information is not well known;
- the identity of the individuals in the document have not been officially disclosed or confirmed as individuals who attended the event, that is they are not known to be associated with the event in an official capacity;
- the information is not available from publicly accessible sources

In the absence of undertaking consultation with the invitees and their guests I find it is unreasonable to disclose their personal information without their expressed consent. I am satisfied the relevant third parties would reasonably expect their personal information would not be released without their express consent.

As such I find the information in Document 2 is conditionally exempt under section 47F of the FOI Act.

3. Public Interest

The FOI Act provides that a conditionally exempt document must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest⁷. In determining whether its disclosure

⁷ Section 11A(5) of the FOI Act

would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors.

As I have decided that material is conditionally exempt, I am now required to consider the public interest factors. In doing so I have not considered the irrelevant factors as set out in section 11B(4) of the FOI Act.

In applying the public interest test I have noted the objects of the FOI Act⁸ and the factors favouring access as listed in section 11B(3) of the FOI Act. Having regard to the material before me and the circumstances of the content within the documents found to be conditionally exempt I am satisfied of the following:

- access would promote the objects of the FOI Act
- It is not clear how the information of the guest list or list of delegations would result in public debate on matters of the Australian government
- the release of the conditionally exempt information within the documents does not offer any insights into public expenditure
- I am satisfied that your personal information is not contained within the conditionally exempt documents and therefore section 11B(3)(d) is not a relevant factor to favour access

The FOI Act does not set out any public interest factors against disclosure and require that agencies are to have regard to the Guidelines in order to work out if disclosure would, on balance, be contrary to the public interest.⁹ The Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the documents found to be conditionally exempt, may weigh against disclosure.¹⁰

The main factor against disclosure in the impact disclosure would have to the right of an individual to maintain their privacy. The disclosure of such information could reasonably be expected to prejudice the protection of third parties' right to privacy.

I also consider the information relates to maintaining good international relations with foreign bodies and governments, the disclosure of which could jeopardise those relationships.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the requested document would be contrary to the public interest.

⁸ Section 3 of the FOI Act

⁹ Section 11B(5) of the FOI Act

¹⁰ Paragraph 6.233 of the Guidelines

Review rights

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

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days after the date of this letter, please attach the reasons why you disagree with the decision.

Applications for review should be sent to foi@pmc.gov.au.

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. You can apply using the [OAIC Web Form](#).¹¹

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. You can make a complaint using the [OAIC Web Form](#).¹²

¹¹ <https://webform.oaic.gov.au/prod?entitytype=ICReview&layoutcode=ICReviewWF>

¹² <https://webform.oaic.gov.au/prod?entitytype=Complaint&layoutcode=FOIComplaintWF>

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, appearing to be 'L. Thompson', written over a horizontal line.

Laura Thompson
A/g Assistant Secretary
Protocol and International Visits Branch
Department of the Prime Minister and Cabinet

16 January 2025