



OFFICIAL

## Freedom of Information (FOI) request

### Notice of Internal Review Decision

Reference: FOI/2024/345IR

Alan Cole

Email: [foi+request-12217-e07f77f8@righttoknow.org.au](mailto:foi+request-12217-e07f77f8@righttoknow.org.au)

Dear Mr Cole

I refer to your email dated 7 February 2024, seeking an internal review under the *Freedom of Information Act 1982* ('FOI Act'), of the decision made on 16 January 2025 (the primary decision) by the Department of the Prime Minister and Cabinet (the Department).

Under section 54(2) of the FOI Act, an applicant is entitled to apply for a review of a decision refusing to give access to a document in accordance with a request.

### Scope of request

You set out your request for internal review as follows (extract):

*I am writing to request an internal review of the Department of the Prime Minister and Cabinet's handling of my FOI request, 'Official Visits'.*

On 24 October 2024, you made a request to the Department under the FOI Act in the following terms:

- 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

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to undertake a review of that decision.

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

## Material taken into account

In reaching my decision, I have had regard to:

- the terms of the FOI request;
- the requested documents;
- the primary decision;
- your request for internal review;
- the FOI Act;
- the FOI Guidelines issued by the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines); and
- the views of a third party consulted by the Department under section 15(7) of the FOI Act.

On 16 January 2025 the decision-maker, Laura Thompson, granted access in part to the requested documents, with exemptions under sections 33(a)(iii) and 47F of the FOI Act.

## Reasons for Internal Review decision

After careful consideration, I have decided to affirm the primary decision. In particular I find that Documents 1 and 3 are exempt in full under section 33(a)(iii), and Document 2 is to be released in part, with material exempt under sections 33(a)(iii) and 47F.

My findings of fact and the reasons for my decision are set out below.

### Section 33(a)(iii) — International Relations

Section 33(a)(iii) of the FOI Act provides that a document is exempt if its disclosure would, or could reasonably be expected to, cause damage to 'the international relations of the Commonwealth'. The application of this exemption to each document in the document package will be dealt with in turn below.

#### Document 1

Document 1 is a list of delegates that accompanied His Majesty King Charles III and Her Majesty Queen Camilla on the Royal Visit to Australia. Based on the views of the Royal Household, the FOI Guidelines,<sup>1</sup> and relevant case law,<sup>2</sup> the decision-maker considered that disclosure of Document 1 could be reasonably expected to damage the Commonwealth's international relations by

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<sup>1</sup> Office of the Australian Information Commissioner, FOI Guidelines (July 2024) [5.41].

<<https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines>> ('FOI Guidelines').

<sup>2</sup> *Secretary, Department of the Prime Minister and Cabinet and Summers (Freedom of Information)* [2019] AATA 5537 (20 December 2019).

compromising the confidential nature of the Royal Household's communications with Australia. The convention protecting the confidentiality of such communications is one that '[t]he Royal Household [supports] *in the strongest terms*'.<sup>3</sup>

In your internal review request, you challenged the use of section 33(a)(iii) on the basis that 'the monarch is now the king not the Queen who passed away'. I have considered this contention, but nevertheless am of the view that release of the document would damage the Commonwealth's international relations for two reasons.

First, in general, a reference to the Sovereign reigning at the time the reference was made should be interpreted as reference to the current Sovereign within a legal context.<sup>4</sup>

Second, as outlined in the FOI Guidelines, the convention does not merely attach to correspondence with the Sovereign, but also to 'members of the Royal Household, including the Queen's Private Secretary'. Although Document 1 was created by the Department, it reflects communications from the Royal Household, provided in confidence to the Department, to support the Royal Visit.

I am satisfied that the release of Document 1 would disclose the substance of these communications in a way that would contravene the confidentiality convention and damage the Commonwealth's international relations.

### Document 2 and 3

Document 2 is the guest list of the Parliamentary Reception for His Majesty King Charles III and Her Majesty Queen Camilla ('the Reception'). Document 3 is a list of members of the delegation that accompanied Chinese Premier Li Qiang to Australia in June 2024. Portions of Document 2, and the entirety of Document 3 contain information that was communicated to the Australian Government by foreign entities in confidence. The decision-maker determined that this information was exempt under section 33(a)(iii) on the basis that the disclosure of this information would damage Australia's international relations by undermining the mutual understanding of confidentiality upon which diplomacy relies. I am satisfied with the reasoning of the decision-maker and consider that this information is exempt under section 33(a)(iii).

I note this information may also attract the exemption in section 33(b) which protects confidential communications received from foreign entities. However, as I have already determined that the relevant section of this document is exempt in full, I find it unnecessary for me to consider whether the section 33(b) exemption applies in this case.

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<sup>3</sup> Ibid [82] (emphasis in original).

<sup>4</sup> See eg, *Acts Interpretation Act 1901* s 16.

## Section 47F — Personal privacy

As outlined in the primary decision, section 47F(1) of the FOI Act provides that a document is conditionally exempt if its release would constitute an 'unreasonable disclosure of personal information'. I note that 'personal information' has the same meaning as in section 6 of the *Privacy Act 1988* ('Privacy Act').<sup>5</sup>

Document 2 contains the names and personal information of the Reception's attendees. When considering whether release of this information would be an 'unreasonable disclosure', I have considered the provisions of section 47F(2), which require me to have regard to:

- (a) *the extent to which the information is well known;*
- (b) *whether the person is known to be associated with the matters in the document;*
- (c) *the availability of the information from a public source; and*
- (d) *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.*

Whether or not disclosure would be 'reasonable' is also influenced by the nature of the relevant information, the circumstances under which it was obtained, and the likelihood that the Reception's attendees would not wish to have that information disclosed without consent.<sup>6</sup>

I am satisfied that the information that is redacted under section 47F(1) is not well known and was communicated within circumstances that would substantiate a reasonable expectation that information would not be released without individuals' express consent. Further, I consider that, owing to their large number, it would not be reasonably practicable to consult every third-party whose personal information is redacted under section 47F(1). In the absence of express consent and with regard to relevant circumstances, I consider it unreasonable to disclose that information.

I note that certain individuals' attendance of the Reception is either publicly reported, or could be reasonably deduced from public reporting. Pursuant to section 47F(2)(a), personal information that relates to these attendees has not been redacted has been provided to you in the released documents.

## Public Interest Test

The FOI Act provides that conditionally exempt information, such as the material redacted under section 47F in Document 2, must nevertheless be disclosed unless its disclosure would, on balance, be contrary to the public interest.<sup>7</sup> In determining whether its disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors. As part of my considerations, I refer to and affirm the decision-maker's with regard to public interest consideration.

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<sup>5</sup> FOI Act s 4(1).

<sup>6</sup> See *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 [259].

<sup>7</sup> FOI Act s 11A(5)).

Section 11B(3) lists several factors that would weigh in favour of release. I consider that, while disclosure may promote the objects of the FOI Act, I do not consider that release would inform debate on a matter of public importance, promote effective oversight of expenditure, or allow any person to access their own personal information.

Further to those findings, I consider the main factor against disclosure is that disclosure of personal information would cause stress to a third party and prejudice their right to maintain their personal privacy. This is the first factor against access acknowledged by the FOI Guidelines and is well-established by precedent.<sup>8</sup> I also assess that the release of this information would detrimentally affect the Commonwealth's international relations by publicly releasing the names of Reception attendees in a manner that was not contemplated by relevant foreign parties.

Accordingly, I am of the view that disclosure of the requested document would be contrary to the public interest.

### Senate Estimates Questions on Notice

Part 9 of the FOI Guidelines requires me to bring an independent and impartial mind to the internal review. The FOI Act does not prescribe any procedure or criteria for internal review decision-making but the internal review decision-maker is expected to make a new decision with consideration given to all issues raised by the applicant for internal review.

You have referenced information provided by the Department Senator the Hon Jenny McAllister, Minister for Emergency Management and Minister for Cities, in response to Senate Estimates Question on Notice PM090, Budget Estimates 2018-2019. In response to that question, the Department provided certain information relating to members of the travelling party that accompanied His Royal Highness The Prince of Wales and Her Royal Highness The Duchess of Cornwall on their visit to Australia to open the Commonwealth Games in 2018. In your review application, you advised you would like to know why the exemptions in sections 33(a)(iii) and 47F were applied to this matter, but not in relation to the documents released to the Senator.

Freedom of Information applications are governed by the FOI Act, to which the original decision maker and I have referred throughout our decisions. The Senate Estimates process, including Questions on Notice, are subject to separate constitutional, legislative and procedural frameworks.<sup>9</sup> It is to be expected that information that would be released under one regime may not be released under the other. I do not consider the response to Senator McAllister's Senate Estimates Question on Notice to be relevant to the matters I am required to consider under the FOI Act.

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<sup>8</sup> FOI Guidelines [6.233]. See eg, *'PX' and Australian Federal Police (Freedom of Information)* [2019] AICmr 8 [119]; *Paul Farrell and Department of Home Affairs (Freedom of Information)* [2023] AICmr 31 (28 April 2023) [43].

<sup>9</sup> See eg, *Constitution s 50, Parliament of Australia, Standing Orders and other orders of the Senate* (PDF, October 2022) 32-3

<[https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/standingorders/b00](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/b00)>.

## Summary

In light of the above, I affirm the Department's original decision of 16 January 2025.

## Review rights

If you disagree with my decision, you may apply to the Australian Information Commissioner to review my decision under section 54L of the FOI Act. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter.

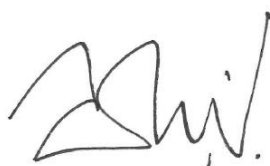
More information about Information Commissioner reviews is available [here](#).<sup>10</sup>

## 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. 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 [here](#).<sup>11</sup>

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

Yours sincerely



Arthur Spyrou  
First Assistant Secretary  
Ministerial Support Division  
Department of the Prime Minister and Cabinet  
6 March 2025

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<sup>10</sup> Office of the Australian Information Commissioner, *Apply for an Information Commissioner review* (Webpage) <<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review>>.

<sup>11</sup> Office of the Australian Information Commissioner, *Make a freedom of information complaint* (Webpage) <<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>>.