



18 December 2024

Oliver Smith (Right to Know)

BY EMAIL: foi+request-12238-4ae7d721@righttoknow.org.au

In reply please quote:

FOI Request: FA 24/10/01772

File Number: FA24/10/01772

Your Reference: Oliver Smith (Right to Know)

Dear Oliver Smith (Right to Know)

Freedom of Information (FOI) request – Decision

On 28 October 2024, the Department of Home Affairs (the Department) received a request 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.

1 Scope of request

You have requested access to the following documents:

Under the FOI Act, I seek a copy of the Ministerial Brief provided to the office of Home Affairs Minister Tony Burke on 12/8/24 with the Brief PDR No. MS24-000678.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

4 Documents in scope of request

The Department has identified six documents as falling within the scope of your request. These documents were in the possession of the Department on 28 October 2024 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in part;
- Exempt five documents in full from disclosure.

6 Reasons for Decision

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 Section 22 of the FOI Act – irrelevant to request

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 29 October 2024, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff and non-public facing email addresses, contained in documents that fall within scope of an FOI request.

I have decided that parts of document marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. I have prepared an edited copy of the document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

6.2 Section 42 of the FOI Act – Legal Professional Privilege

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that documents one to four and six comprise confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of these documents are not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege.

I have decided that documents one to four and six are exempt from disclosure under section 42 of the FOI Act. Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

7 Your review rights

Internal review

You do not have the right to seek an internal review of this decision. This is because section 54E(b) of the FOI Act provides that, when an agency is deemed to have refused an FOI request under section 15AC of the FOI Act, the applicant does not have the right to seek an internal review of the deemed decision.

The Department was deemed to have refused your request under section 15AC of the FOI Act because it did not make this decision within the statutory timeframes for the request.

While the Department has now made a substantive decision on your request, section 15AC of the FOI Act continues to apply to your request, which means that any request you make for internal review will be invalid.

Information Commissioner review

You can instead request the Australian Information Commissioner to review this decision. If you want to request an Information Commissioner review, you must make your request to the Office of the Australian Information Commissioner (OAIC) within 60 days of being notified of this decision.

You can apply for an Information Commissioner review at: [Information Commissioner review application form on the OAIC website](#).

If you have already applied for an Information Commissioner review, there is no need to make a new review request. The OAIC will contact you shortly to give you an opportunity to advise whether you wish the review to continue, and to provide your reasons for continuing the review.

You can find more information about Information Commissioner reviews [on the OAIC website](#).

8 Making a complaint

You may make a complaint to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. This is a separate process to the process of requesting a review of the decision as indicated above.

You can make an FOI complaint to the Office of the Australian Information Commissioner (OAIC) at: [FOI Complaint Form on the OAIC website](#).

9 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.

Yours sincerely,

Electronically signed

David
Position number: 60040814
Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

**SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982**

FOI request: FA 24/10/01772

File Number: FA24/10/01772

No.	Date of document	No. of pages	Description	Decision on release	
1.	12 August 2024	4	MS24-000678	Exempt in full	s. 42(1)
2.	-	3	Attachment A	Exempt in full	s. 42(1)
3.	-	5	Attachment B	Exempt in full	s. 42(1)
4.	-	3	Attachment C	Exempt in full	s. 42(1)
5.	-	3	Attachment D	Release in part	s. 22(1)(a)(ii)
6.	-	2	Attachment E	Exempt in full	s. 42(1)