



The Hon Michelle Rowland MP

Minister for Communications
Federal Member for Greenway

Our reference: MO 25-175

Ash Roth

By email: foi+request-12308-29965e53@righttoknow.org.au

Dear Ash Roth

Decision on your Freedom of Information Request

On 8 November 2024, you submitted a request to the Minister for Communications (the Minister), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

1 Your request

You requested access to:

All communications (including briefing notes) between the public service and you / your office on the proposed age restrictions or under-age access ban to be imposed on social media platforms.

I am seeking the materials that were sent/received between 1 September 2024 and 7 November 2024.

Please exclude personal information of individual staff, documents that are explicitly prepared for submission to Cabinet or National Cabinet, and drafting instructions for legislation.

On 9 December 2024, the Minister's Office commenced a formal request consultation process with you, advising you that we considered the work involved in processing your request would substantially and unreasonably divert the resources of the Minister's Office from its other operations.

On 10 December 2024, at the conclusion of that request consultation, you agreed to revise the scope of your request the following:

All briefing notes provided to the Minister on the proposed age restrictions or under-age access ban to be imposed on social media platforms that were sent/received between 1 September 2024 and 7 November 2024.

Please exclude personal information of individual staff, documents that are explicitly prepared for submission to Cabinet or National Cabinet, and drafting instructions for legislation.

2 Authority to make decision

I am authorised to make decisions in relation to Freedom of Information requests on behalf of the Minister.

3 Decision

I have identified 10 documents that I consider contain information that is relevant to your request. These documents were in the possession of the Minister's Office when your request was received.

I have decided to:

- grant access in full to relevant information in 3 documents
- grant partial access to 5 documents
- refuse access to 2 documents

A schedule setting out the documents relevant to your request, with my decision in relation to these documents, is at **ATTACHMENT A**.

4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

4.1 Section 34 - Cabinet documents

Section 34(1)(a) of the FOI Act provides that a document is an exempt document if both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted and
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet

Section 34(1)(c) of the FOI Act provides that a document is an exempt document if it was brought into existence for the dominant purpose of briefing a Minister on a document to which subsection (a) above applies.

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.63 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 21, 23 105 and 106 of the Cabinet Handbook¹ respectively state:

21. The principle of collective responsibility requires that ministers should be able to express their views frankly in Cabinet meetings in the expectation that they can argue freely in private while maintaining a united front in public when decisions have been reached. This in turn requires that opinions expressed in the Cabinet and Cabinet Committees, including in documents and any correspondence, are treated as confidential.

¹ www.pmc.gov.au/government/administration/cabinet-handbook-15th-edition

23. The vital importance of confidentiality in relation to the deliberations of Cabinet is recognised in legislation and under the common law. The Freedom of Information Act 1982 (the Act), for example, recognises the special nature of Cabinet deliberations in the exemption it provides for certain Cabinet documents from disclosure under the Act (subject to limited exceptions). Cabinet confidentiality is also a well-established ground for not producing documents or information on a public interest immunity basis to courts, royal commissions or legislatures.
105. Cabinet documents are considered to be the property of the Government of the day. They are not departmental records. As such they must be held separately from other working documents of government administration.
106. The unauthorised and premature disclosure of Cabinet documents, including draft Cabinet documents (such as draft Cabinet minutes), undermines collective ministerial responsibility. It also undermines the convention of Cabinet confidentiality. It is essential that the confidentiality of Cabinet documents, including draft Cabinet documents, is maintained to enable full and frank discussions to be had prior to the Cabinet making its decision.

I have had regard to the circumstances in which the document marked 's34(1)' in the schedule was brought into existence, and I am satisfied that it was created for the dominant purpose of briefing a Minister on a document to which subsection (a) applies.

I have had regard to the content of parts of the documents marked 's34(3)' and am satisfied that they contain information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that parts of the documents marked 's34' are exempt under section 34 of the FOI Act.

4.2 Section 42 - Documents subject to 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.

The FOI Guidelines state:

- 5.149 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
 - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
 - whether the advice given is independent
 - whether the advice given is confidential

I am satisfied that parts of the documents marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence

- the communication was brought into existence for the dominant purpose of giving or receiving legal advice
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that parts of the documents marked 's42' are exempt from disclosure under section 42 of the FOI Act.

4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

Deliberative process

Paragraph 6.54 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Deliberative matter

Paragraph 6.59 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that parts of the documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as a thinking process or the process of reflection upon the wisdom and expediency of a particular proposal.

Interaction with Cabinet documents exemption

Paragraph 6.76 of the FOI Guidelines states:

6.76 In some cases, a document may contain deliberative matter that relates to Cabinet in some way but is not exempt under the Cabinet documents exemption in s 34. An example would be a document containing deliberative matter that is marked 'Cabinet-in-Confidence' but nonetheless does not satisfy any of the exemption criteria in s 34. Disclosing a document of this kind will not necessarily be contrary to the public interest only because of the connection to Cabinet deliberations. For example, disclosure is less likely to be contrary to the public interest if:

- the document contains deliberative but otherwise non-sensitive matter about a policy development process that has been finalised and
- the Government has announced its decision on the issue.

I am satisfied that the deliberative matter marked 47C in the documents relates to matters which are subject to ongoing Cabinet deliberation, but that it does not meet the limited application of section 34 of the FOI Act. The material is marked 'Cabinet-in-Confidence' but nonetheless does not satisfy any of the exemption criteria in section 34.

For the reasons outlined above, I decided that parts of the documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

4.4 Section 47F – Documents affecting personal privacy

Section 47F 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 (including a deceased person).

Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means 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.

Paragraph 6.126 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.125 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) 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
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.133 of the FOI Guidelines states that:

The personal privacy conditional exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more

factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

4.5 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.224 of the FOI Guidelines states 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
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

Factors favouring disclosure

Having regard to section 11B of the FOI Act, which provides the factors favouring access to conditionally exempt information in the public interest, I consider that disclosure of the conditionally exempt information at this time:

- 1) would provide access to documents held by an agency of the Commonwealth, which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government
 - I note that paragraph 6.230 of the FOI Guidelines suggests it would be a rare case in which disclosure would not promote the objects of the FOI Act, including by increasing scrutiny, discussion, comment and review of the government's activities.
- 2) would to a limited degree inform debate on a matter of public importance
- 3) would not promote effective oversight of public expenditure
- 4) would not allow you access to your own personal information.
 - I note you are not seeking access to your own personal information and this factor is mute in my considerations.

Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- 1) could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- 2) could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
 - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

4.6 Section 22 – deletion of material from documents released to you

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

Exempt material

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents released to you by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

Irrelevant material

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. Some documents contain material about multiple topics. Your request specifically relates to “the proposed age restrictions or under-age access ban to be imposed on social media platforms”, and as such I have decided that any information contained within the Ministerial Brief which does not relate to “the proposed age restrictions or under-age access ban to be imposed on social media platforms” can reasonably be regarded as irrelevant to your request. You have also expressly excluded from the scope of your request documents that are explicitly prepared for submission to Cabinet.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of the documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

5 Material taken into consideration

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- submissions from third parties consulted about documents which contain information concerning them

6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562.

7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: www.oaic.gov.au/freedom-of-information/foi-review-process.

8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log.

Further information

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts provides administrative assistance to the Minister's Office in relation to FOI matters. If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a long horizontal stroke extending to the right.

Shervin Rafizadeh
Chief of Staff

Date: 20 January 2025

SCHEDULE OF DOCUMENTS MO 25-175

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	11/09/2024	Ministerial Submission - MS24-001726: 2024 Spring variation bid – Social media Age Limit ² Attachment B: Letter to the Prime Minister		Partial access granted	s22 s34(3) s47C
2.	23/9/2024	Ministerial Submission - MS24-001787: Social Media Age Limits Legislation – Seeking Prime Ministerial Exemption for Impact Analysis Attachment A: Letter to the Prime Minister seeking Impact Analysis Exemption		Partial access granted	s22 s34(3) s47C
3.	26/9/2024	Meeting Brief – MB24-000682: Online Harms Ministers Meeting ³ Attachment A: October OHMM Agenda and list of attendees Attachment B: Annotated agenda Attachment E: Paper on social media age limits Attachment F: Summary: Potential portfolio discussion points		Access granted to relevant information	s22
4.	2/10/2024	Ministerial Submission MS24-001884: Release of Exposure Draft – Social Media Age Limits Legislation – Design Principles Cabinet Submission ⁴		Access refused in full	34(1)(c)
5.	4/10/2024	Ministerial Submission – MS24-001906: Release of Coordination Final – Social Media Age Limits Legislation – Design Principles Cabinet Submission ⁵		Access refused in full	34(1)(c)
6.	9/10/2024	Meeting Brief – MB24-000669: New South Wales (NSW) and South Australia (SA) Social Media Summit – 10 & 11 October 2024 Attachment A: Biographical Details Attachment B: Talking Points Attachment C: Programs for NSW and South Australia Summits		Partial access granted	s22 s47F

² Document 1 Attachment A is a document submitted to Cabinet and has been explicitly excluded by the applicant from the scope of the request.

³ Document 3 Attachments C and D are outside the scope of the request as they do not relate to Social Media age limitations.

⁴ Document 4 Attachment A to is a document submitted to Cabinet and has been explicitly excluded by the applicant from the scope of the request.

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
7.	29/10/2024	Ministerial Submission MS24-002038: Release of Exposure Draft – Social Media Minimum Age Bill Attachment A: Exposure Draft of the Online Safety Amendment (Social Media Minimum Age) Bill 2024 Attachment B: Draft Online Safety (Age-Restricted Social Media Platforms) Rules 2024		Partial access granted	s22 34(3) s42 in full s42 in full
8.	31/10/2024	Meeting/Event Brief MB24-000758: Social media minimum age legislation – targeted consultation ⁶ Attachment A: Biographical Details (A1) and Talking Points (A2) – Hon Robert French AC Attachment B: Talking Points – eSafety Commissioner Attachment C: Biographical Details (C1) and Talking Points (C2) – Mental health organisations Attachment F: Legislative design principles Attachment G: Summary of state and territory responses to PM letter Attachment H: Open letter from academics, experts and civil society organisations		Partial access granted	s22 47C s47F
9.	6/11/2024	Question Time Brief QB24-000078: Social Media Age Limited		Access granted in full	
10.	7/11/2024	Email: RE Briefing note - Social Media Minimum Age Law - Design Principles Attachment A: Briefing note - Social Media Minimum Age Law - Design Principles		Access granted to relevant information	s22

⁶ Document 8 Attachments D and E are excluded from the scope of the request on the basis that they are duplicates of Document 7 Attachments A and B to