



Our reference: FOIREQ24/00602

Glenn Hamiltonshire

By email: foi+request-12349-3c3b83cb@righttoknow.org.au

Dear Glenn

Freedom of Information Request – FOIREQ24/00602

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information (FOI request) was received by the Office of the Australian Commissioner (OAIC) on 19 November 2024.

I am writing to inform you of my decision.

I have identified 2 documents within the scope of your request and I have made a decision to grant access in part to 2 documents.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

‘I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Office of the Australian Information Commissioner’.

Following consultation with you on the scope of your request, on 10 December 2024, I wrote to you to acknowledge your request and to suggest that 2 discrete documents may fall within the scope of your request. I invited you to respond to my email, however we did not hear from you by the required date; 13 December 2024.

As we did not hear from you by this date, we assumed you did not object to proceeding with your FOI decision on the basis of the 2 documents identified:

- OAIC Style Guide – reviewed in June 2022
- OAIC Brand Guidelines – January 2021.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to grant access in part to 2 documents.

Searches undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within the scope of an FOI request.

In response to your request, the following line areas of the OAIC conducted reasonable searches for documents relevant to your request:

- The Communications Team.

Searches were conducted across the OAIC's various document storage systems including the OAIC's document holding system – Content Manager and the OAIC's intranet page.

The following search terms were used when undertaking electronic records searches:

- Style Guide, brand guide, OAIC branding, OAIC style guide and OAIC brand guide.

Having consulted with the relevant line area and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request and that all relevant documents have been found.

Reasons for decision

Material taken into account

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

- your FOI request dated 19 November 2024 and subsequent revised scope dated 10 December 2024
- the FOI Act, in particular sections 3, 11, 11A, 15, 26 and 47E(d) of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)
- consultation with the line area of the OAIC in relation to your request.

Access to edited copies with irrelevant and exempt matter deleted (section 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt to the request.

I have determined that FOI Act exemptions apply to one page of this material. Accordingly the exempt material has been removed in accordance with s 22(1)(a)(i) of the FOI Act.

I have prepared an edited copy of the document which removes this material in accordance with s 22 of the FOI Act, and otherwise grants you access to the material in the scope of your request.

The material which I have decided is subject to exemption comprises of OAIC login username and password details.

I consider the documents within scope of this request are exempt in accordance with section 47E(d) of the FOI Act, on the basis that disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC's operations.

Paragraph 6.14-6.16 of the FOI Guidelines explains that the test 'would or could reasonably be expected to':

6.14 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

6.15 The use of the word 'could' is less stringent than 'would' and requires analysis of the reasonable expectation rather than the certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

6.16 The mere risk, allegation, possibility, or chance of prejudice does not qualify as a reasonable expectation. There must be, based on reasonable grounds, at least a real,

significant or material possibility of prejudice, if they can be included without disclosing exempt material (s 26, see Part 3).

As explained above, the material which I have decided is subject to conditional exemption comprises of:

- OAIC username and password details.

In undertaking an assessment of this conditional exemption, I have had regard to relevant Administrative Review Tribunal (ART) (formerly the AAT) and Information Commissioner decisions including *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66, *Paul Farrell and Department of Home Affairs (Freedom of information) (No 2)* [2022] AICmr 49 (8 April 2022) and *Knight v Commonwealth Ombudsman* [2021] AATA 2504.

In *Seven Network Operations Limited and Australian Human Rights Commission* [2021] AICmr 66, a document was found not to be conditionally exempt under section 47E(d) of the FOI Act in circumstances where the agency argued that disclosure of the relevant material would or could reasonably be expected to result in stakeholders declining to work with the Australian Human Rights Commission.

The decision found that there was not sufficient evidence to support the conclusion that such harm would occur. Similarly in *Paul Farrell and Department of Home Affairs (Freedom of information) (No 2)* [2022] AICmr 49 (8 April 2022), whilst the material found within the documents related to the Department of Home Affairs' operations, the Commissioner determined that the Department had failed to provide sufficient evidence as to why disclosure would have a substantial and adverse effect on its operations.

These decisions further reinforce the position that this provision requires a high threshold as to the substantial and adverse effect that disclosure would have on an agency's operations to which I have turned my mind.

In order to determine whether disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the OAIC, I have taken into consideration the functions and activities of the OAIC.

I consider that the disclosure of the material described in the document would or could reasonably be expected to have an adverse effect on these regulatory and other corporate functions of the agency, as release would enable unscrupulous actors to access and compromise the OAIC's access to an external resource. This could negatively impact the OAIC's ability to manage corporate branding and images.

Accordingly, we consider that the disclosure of the material would or could reasonably be expected to have an adverse effect on the OAIC's ability to manage its corporate affairs.

In my view, these adverse effects from the disclosure of the relevant documents at this time are more than merely an assumption and would impact upon the proper and efficiency operations of the OAIC.

For the reasons given above, I consider the relevant documents identified in the schedule are conditionally exempt under section 47E(d) of the FOI Act.

As section 47E is a conditional exemption, I am also required to consider the application of a public interest test.

Application of the public interest test – (section 11A and 11B)

As provided above, I have considered that material within the documents is subject to a conditional exemption under section 47E(d) of the FOI Act.

Section 11A(5) provides that where a document is considered to be conditionally exempt, an agency **must** give the person access to that document unless the FOI decision maker would, on balance, would be contrary to the public interest.

This means that I must balance factors for and against disclosure in light of the public interest.

In Chapter 6 of the FOI Guidelines, the following guidance is noted:

- 6.4 *There is a **single public interest test to apply to each of the conditional exemptions**. This public interest test is defined to include certain factors that must be taken into account where relevant, and some factors which must not be taken into account.*
- 6.5 *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 public interest***
 - *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.

- 6.6 *It is not necessary for a matter to be in the interest of the public as a whole. It may be sufficient that the matter is in the interest of a section of the public bounded by geography or another characteristic that depends on the particular situation. A matter of public interest or benefit to an individual or small group of people may also be a matter of general public interest.*

In the AAT case of *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269, at paragraph 133 of the Decision, Deputy President Forgie explained that:

... the time at which I make my decision for section 11A(5) requires access to be given to a conditionally exempt document 'at a particular time' unless doing so is, on balance, contrary to the public interest. Where the balance lies may vary from time to time for it is affected not only by factors peculiar to the particular information in the documents but by factors external to them.

Factors against access

The FOI Act sets out four factors favouring access, which must be considered if relevant. Of these factors, we consider the following to be relevant:

- promote the objects of the FOI Act
- inform debate on a matter of public importance.

In addition to these relevant factors favouring disclosure, I have also considered that the following factors in favour of disclosure apply:

- disclosure would better inform a matter of public importance or debate.

Section 11B(4) of the FOI Act provides factors which are *not* to be taken into account in which I have had regard to.

Section 11B does not further prescribe the factors against disclosure to be considered. In considering the documents subject to this request, I consider that the following factors do not favour disclosure:

- disclosure would have an adverse effect on the OAIC's proper and efficient operations relating to its corporate and regulatory functions
- disclosure would have an adverse effect on the OAIC's proper and efficient

operations relating to the timely release and publication of media material and important regulatory reports.

Releasing the exempt material would allow unauthorised actors to use the OAIC's subscription to an external resource. Misuse of official government resources may constitute fraud against the Commonwealth.

We consider this to be adverse to the public interest.

In balancing these factors for and against, I have placed greater weight on factors in relation to protecting the OAIC's ability to manage the proper and efficient publication of future materials.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Balancing factors for and against disclosure

In balancing these factors for and against, I have given significant weight to the importance of allowing a person to access information which would enhance the scrutiny of government decision making and inform debate on a matter of public importance.

I consider that in relation to the exempt material, the disclosure would not contribute to providing you access to material that would either enhance the scrutiny of government decision making nor would it inform this debate. In relation to this material, I consider the need to protect OAIC's ability to conduct its regulatory and corporate operations in an efficient and effect manner, outweighs the factors for disclosure.

As noted above, I have considered that material within the documents is subject to the conditional exemption under section 47E(d) of the FOI Act.

Disclosure log decision

Section 11C of the FOI Act requires the OAIC to publish documents released under the FOI Act on the OAIC's disclosure log within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of documents

The documents are enclosed for release. Please see the following page for information about your review rights.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Tulloch', written in a cursive style.

Karen Tulloch
Assistant Director
Office of the Australian Information Commissioner

19 December 2024

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Review Tribunal (ART).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the ART, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5288
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact foi@oaic.gov.au. More information is available on the Access our information page on our website.