



30 December 2024

Glenn Hamiltonshire

By email: foi+request-12410-e67913bc@righttoknow.org.au

Dear Mr Hamiltonshire,

Freedom of Information – Notice of decision

FOI Reference number: 24/25 – 33

I refer to your email to the Fair Work Commission (**Commission**) dated 29 November 2024, in which you made a request for documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Decision

My decision is as follows:

- partial access to Document 1 is granted with selected information conditionally exempt under sections 47E(d) and 47G on the grounds that the disclosure of that information would, on balance, be contrary to the public interest; and
- partial access to Document 2 is granted with selected information conditionally exempt under section 47E(d) as the disclosure of that selected information would, on balance, be contrary to the public interest.

I am authorised as a delegate of the President of the Commission under the FOI Act to make a decision in relation to your request. The 30-day statutory time period for processing your request commenced on the day after the day on which the request was received. The due date for your request is **Monday 30 December 2024**.

The reasons for my decision are outlined in further detail in this letter. However, I will first recap your request.

Request

In your email of 29 November 2024, you stated:

"I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Fair Work Commission."

I requested the Commission's publication team conduct a search for the requested documents. I also checked the Commission's document storage system to identify documents that came within the scope of your request.

The documents that were identified that came within the scope of your request include:

- Fair Work Commission Editorial standards (Document 1)
- Fair Work Commission Brand style Guide (Document 2)

Reasons for decision

Considerations

In reaching my decision, I considered the following:

- your request dated 29 November 2024;
- the FOI Act;
- guidelines issued by the Office of the Australian Information Commissioner, as prescribed under section 93A of the FOI Act (**FOI Guidelines**); and
- the results of searches performed by Commission staff in locating the requested documents.

Reasons for decision

Before I provide an explanation regarding the reasoning behind my decision, there are some key points that I will raise regarding the scope of your request and the FOI Act.

Section 11 of the FOI Act bestows upon you a legally enforceable right to access documents held by a Commonwealth agency such as the Commission.

If a decision-maker reaches a conclusion that part of, or the entirety of a document falls within an exemption under the FOI Act, then part of, or the entirety of that document does not have to be disclosed.¹

There is nothing in the FOI Act which limits what an applicant can do with any document which is released to them and that has been taken into consideration for the purposes of this request. In other words, a decision to give an individual access to a document under the FOI Act is generally done on the premise that the disclosure of that document is disclosed to a wider audience.²

I will now turn to the requested documents.

Document 1 – Fair Work Commission Editorial standards

Document 1 outlines the standards the Commission expects its staff to follow in its written communications. The document is based on the Australian Style Guide Manual which is publicly available.

I have decided to redact the username and password made available to Commission staff to access the Commission's Macquire Dictionary online account information under section 47G of the FOI Act as I consider this to be confidential business information.

¹ *Freedom of Information Act 1982* (Cth), s.31B.

² [3.36] FOI Guidelines.

Business information (section 47G of the FOI Act)

Section 47G of the FOI Act provides:

47G Public interest conditional exemptions – business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) Would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) Could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

...

The operation of this conditional exemption depends on the effect of the disclosure rather than the precise nature of the information itself. The relevant conditional exemption that applies in this context is section 47G(1)(b).

Whether this conditional exemption applies in relation to the disclosure of the requested information requires an objective assessment as to whether there will be an expected adverse effect in releasing the requested information.

The words 'would or could reasonably be expected to' in the context of section 47G(1)(b) involve a consideration of the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document. The meaning of the word 'could' requires an analysis of the reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future. There also must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

Based on the above information, I am satisfied that the username and password I have redacted is conditionally exempt under section 47G of the FOI Act. However, I will consider the public interest exemption below.

Public interest exemption

Under section 11A(5) of the FOI Act, the Commission must give you access to a conditionally exempt document unless in the circumstances it would be, on balance, contrary to the public interest to do so. This applies to the confidential business information conditional exemption.

For the purposes of the FOI Act, 'public interest' 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
- related to matters of common concern or relevance to all members of the public, or substantial section of the public.

Furthermore, I must have regard to section 11B(3) of the FOI Act, which outlines the factors favouring disclosures in the context of public interest. Section 11B(3) provides:

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- a. promote the objects of this Act (including all the matters set out in section 3 and 3A).
 - b. inform debate on a matter of public importance.
 - c. promote effective oversight of public expenditure.
 - d. allow a person to access his or her own personal information.

It is also worth considering whether there are any public interest factors which weigh against the disclosure of the redacted information within the requested documents. The FOI Act does not provide a list of public interest factors which weigh against the disclosure of a document however, [6.224] of the FOI Guidelines provides a non-exhaustive list of those factors, which I have reviewed.

Finally, I cannot and have not considered the factors listed in section 11B(4) of the FOI Act, as those factors are irrelevant in relation to the public interest aspect of the conditional exemptions.

The public interest factor favouring access is that release of the document will promote the objects of the FOI Act. However, I do not consider the release of the Commission's username and password for its online Macquarie Dictionary account promotes a matter of public importance nor does the information contain any information about public expenditure.

The relevant public interest factors against granting access to the conditionally exempt information are outlined at 6.233 of the FOI Guides.

The FOI Guidelines at 6.187 also explains that the Administrative Appeals Tribunal (now the Administrative Review Tribunal) has made a distinction between 'truly government documents' and other business information collected under statutory authority.³ The first category includes documents that have been created by government in contrast to documents between government and business. The AAT decision implies that the conditional exemption is more likely to protect documents obtained from third-party businesses.⁴

The Commission's username and password for the Macquarie Online Dictionary is confidential information. Granting access to this information would be contrary to the public interest as it will cause a degree of harm as it would allow anyone with knowledge of the username and password to access the Commission's Macquarie Online Dictionary account. This may result in damage to the commercial relationship the Commission has with Macquarie Dictionary as well as the Commission's other commercial relationships it has engaged in with other service providers. The Commission is required to keep password data confidential and not release such information into the public domain. Release of this information could undermine the Commission's existing business relationships with several of its service providers.

Therefore, on balance, I have decided the Commission's username and password for the Macquarie Online Dictionary will not be disclosed.

³ *Re Actors' Equity Association (Aust) and Australian Broadcasting Tribunal (No 2)* [1985] AATA 69

⁴ *Ibid*

I have also decided to redact information under section 47E of the FOI Act from Document 1, which may impact the proper and efficient conduct of the Commission if it were to be released.

Certain operations of agencies (section 47E of the FOI Act)

Conditional exemption – certain operations of agencies

Section 47E conditionally exempts a document where the document would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain identified agency operations. The relevant conditional exemption outlined is at subsection 47E(d):

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The FOI Guidelines at 6.18 outlines that the term ‘substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person.’⁵ The word ‘substantial,’ in the context of substantial loss or damage, has been interpreted as including ‘loss or damage that is in the circumstances, real or of substance and not insubstantial or nominal.’⁶

Additionally, the extent to which this exemption applies is greatly dependent on the circumstances and context of the information in question.⁷

Furthermore, in *Re James and Others and Australian National University*⁸, Deputy President Hall of the Administrative Appeals Tribunals observed:

“As a matter of ordinary English, I think that the expression “the conduct of an operations of an agency” is capable of extending to the way in which an agency discharges or performs any of its functions.”⁹

I have decided to redact information contained in Document 1 that explains how the Commission drafts its communications. Such information concerns the type of font and its size, formatting conventions, particular phrasing of words commonly used by the Commission and examples of how to interpret the Guide. Section 47E of the FOI Act provides that a document, or part of a document, is exempt if its disclosure would, or could, reasonably be expected to have an adverse effect on the proper and efficient operations of an agency. I have decided to exempt information under subsection 47E(d) of the FOI Act on the basis that the conditionally exempt information, if disclosed, could be used to assist those who may wish to create fraudulent Commission correspondence, documents and publications and pass them off as legitimate.

The information relating to specific Commission styles and examples of how to write content in public communications does not assist in furthering the objects of the FOI Act. I consider the public benefit in protecting and maintaining the integrity of Commission correspondence and documents from fraudulent misuse outweighs any public interest in the release of the redacted information. Public confidence in the Commission will be undermined if fraudulent documents are able to be passed off as legitimate. The risk associated with the loss of public confidence in the Commission’s ability to carry

⁵ *Re Thies and Department of Aviation* [1986] AATA 141 [24].

⁶ *Tillmanns Butcheries Pty Ltd v Australasian Meat Employees Union & Ors* (1979) 27 ALR 367 [383].

⁷ Moira Paterson, *Freedom of Information and Privacy in Australia; Government and Information Access in the Modern State* (LexisNexis Butterworths, 2005), 311.

⁸ (1984) ALD 687.

⁹ *Ibid* at 699.

out its functions as the national workplace relations tribunal is greater than any public benefit that may come from the release of the exempt information.

I have also redacted references to an internal email address which is provided as a contact point for Commission Members and staff if they require further information or assistance about the Editorial standards. Again, I consider that the adverse effect on the proper and efficient operations of the Commission if this internal email address became widely known and became the recipient of emails from members of the public outweighs the public interest in disclosing this email address. This internal email address is not publicly known and is only intended for the use of Commission Members and staff to query aspects of the Editorial standards.

I have determined that the rest of Document 1 should be disclosed, noting that much of the information it contains is based on the Australian Style Guide which is already in the public domain, and the release of this information is in accordance with the objects of the FOI Act.

Document 2 – Brand style guide

This document outlines the Commission's standards that Commission staff and Members are expected to meet regarding the visual design of Commission documents and email correspondence. I note that part of the visual design guidelines is modelled on the Australian Government Branding Guidelines that outlines how the Australian Coat of Arms is to be displayed. The Australian Government Branding Guidelines can be downloaded from the Department of Prime Minister and Cabinet website.¹⁰

Like my reasoning in relation to the Commission's Editorial standards document, I have decided to redact information under section 47E that explains and instructs how to create Commission documents and correspondence. Again, I consider the public interest in maintaining and protecting the integrity of legitimate Commission documents so that fraudulent documents cannot be created, outweighs the public interest in disclosing this information.

I have again redacted an internal email address that Commission Members and staff can use to seek assistance in the use of the guide, for the same reasons as I explained above in relation to Document 1. The email address is not widely known and is intended for internal use only. The release of this information in response to an FOI request may result in a substantial adverse effect on the Commission's operations if that email address became widely known and became the recipient of emails from members of the public.

Amongst the images in Document 2 that I have decided to redact under section 47E(d) is an image of the Commission's eSignature block, to limit the likelihood of the eSignature block being copied and used to commit fraud. The image of the eSignature block could be used as a template that could be recreated to assist with the perpetration of a phishing emails by an individual pretending to be someone who worked for the Commission. Phishing emails are used by cyber criminals to trick others into giving them personal information. Fraudulent emails are sent from a large organisation to try and steal personal information. Phishing can result in the loss of information, money or identity theft.¹¹

The release of the Commission's eSignature block via your FOI request may cause substantial loss or damage if used by someone who is intent on committing a scam were to have access to this information.

¹⁰ Australian Government Branding

¹¹ Australian Signals Directorate – phishing – [learn about phishing attacks and know what to do if you've been targeted.](#)

It is on that basis that the information referenced above is conditionally exempt under section 47E(d) of the FOI Act.

Section 11A(5) (public interest factors)

I have already stated the principles associated with the public interest factors in the discussion above.

The disclosure of the exempt information in Document 2 may promote the objects of the FOI Act.

However, the disclosure of the exempt information in Document 2:

- may undermine the administration of the Commission's functions by creating the risk of individuals using the information to commit fraud,
- could reasonably undermine public confidence in the Commission if individuals were to use the information to commit fraud, and
- could reasonably be expected to serve no public purpose.

I have not considered the irrelevant factors as listed in section 11B(4) of the FOI Act.

The nature and number of public interest factors against the disclosure of the exempt information in Document 2 outweigh the public interest factors in favour of disclosure. It is on that basis that the disclosure of the exempt information in Document 2, on balance, is contrary to the public interest, and supports my decision to redact that information in the document provided to you.

Rights of review

If you disagree with my decision, you have the right to apply for an internal review of my decision by the Commission. Any request for internal review must be made to the Commission within 30 days of being notified of my decision. The internal review will be conducted by an officer other than myself (as the original decision-maker), and the Commission must make a review decision within 30 days.

Applications for internal review can be sent by email to foi@fwc.gov.au or by mail to GPO Box 1994 Melbourne VIC 3001, addressed to The FOI Officer.

Review by the Information Commissioner

Under section 54L of the FOI Act, you can apply to the Information Commissioner for review of my decision. If you want to apply to the Information Commissioner for review, you must do so in writing within 60 days after you are notified of my decision. More information in relation to this can be found on the [Information Commissioner website](#).

How to make a complaint

You can complain to the Information Commissioner about action taken by the Commission in relation to your FOI request. Enquires to the Information Commissioner can be made by telephone (1300 363 992) or online via an [Enquiry Form](#).

Yours sincerely,

Jane
FOI Delegate
Fair Work Commission