



17 January 2025

FOI ref: 2024/0327

Archibald Andrews

*By email:* foi+request-12654-e5db021b@righttoknow.org.au

Dear Mr Andrews,

### **Notice of Decision for Freedom of Information Request no. 2024/0327**

The purpose of this letter is to give you a decision about access to documents that you have requested under the *Freedom of Information Act 1982* (FOI Act).

#### **Summary**

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

You lodged an FOI request on 18 December 2024 for access to:

*'I request under the Freedom of Information Act copies of any written communications, including emails, between the President of the Administrative Review Tribunal and Deputy President Clare Thompson in relation to:*

*(a) her use of social media generally and in relation the her posts on social media platform X – then known as Twitter – between 2020 to 2022 and tabled during Senate Estimates in November 2024;*

*(b) the types of cases and the jurisdictional areas within which she would be, or would not be, assigned cases.'*

To locate documents relevant to your FOI request, I have consulted with the President's Chambers and Deputy President Clare Thompson. As a result, I have identified one (1) document which falls within the scope of your request:

- Email chain between President Kyrou and Deputy President Clare Thompson between 6 November 2024 to 7 November 2024

#### **Decision**

I have decided to:

- grant partial access to part (a) of your request
- refuse access to part (b) of your request

In making my decision, I have taken the following into account:

- the content of the documents that fall within the scope of your request;
- the FOI Act, specifically sections 11, 21(1)(c), 22, 24A, 47E(c), 47E(d) and 47F; and
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**).

## **Reasons for my decision**

### Section 47E(c) – Public interest conditional exemption – certain operations of agencies

Full names of Tribunal staff members

Section 47E(c) provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by an agency.

In part of the email chain is the full name of a Tribunal staff member. Release of this information could reasonably be expected to identify those persons and create a risk that the persons could become a potential target from aggrieved applicants dissatisfied with the outcome of a review application. In the interest of promoting workplace health and safety, the Tribunal has developed a human resources policy to not release full names of staff members in any external outgoing correspondence. For this reason, I find that full names of Tribunal staff members are conditionally exempt under section 47E(c) as disclosure would have a substantial adverse effect on the management of Tribunal personnel.

#### *Public interest – Section 11A(5) of the FOI Act*

As the information is conditionally exempt, I have considered whether access to the information would, on balance, be contrary to the public interest having regard to the FOI Guidelines. While the objects of the FOI Act include full transparency and accountability, I do not consider that this object is diminished with the exempting of staff members' last names. Staff members are easily identifiable by first names and titles should this be required. I do not consider that releasing staff members' last names to the world at large will inform any public debate nor promote increased effective oversight of public expenditure.

Conversely, a significant factor against disclosure is that disclosure could reasonably be expected to prejudice staff members' right to privacy and safety and interfere with a human resources policy to maintain workplace health and safety by not publicly disclosing the full names of staff members. On balance, I consider that the workplace health and safety of Tribunal personnel must be given greater weight. Therefore, I find that disclosure of the information would be contrary to the public interest under section 11A(5) of the FOI Act.

### Section 47E(d) – Public interest conditional exemption – certain operations of agencies

Contact details of Tribunal staff members

Section 47E(d) provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

In various parts of the email chain are the direct telephone numbers and email addresses of Tribunal staff members. The Tribunal has public access contact arrangements including email addresses and telephone numbers to ensure the efficient and responsive handling of public contacts. The release of direct telephone numbers and email addresses of individual staff members may result in public contact being made through channels that are not consistently monitored, causing delays in responses. Owing to the timeframes applicable to certain Tribunal

cases, this could result in hardship to members of the public and have a substantial adverse effect on the Tribunal's capacity to efficiently deliver its services if contacts do not reach the officers responsible for handling them. For this reason, I find that the information is conditionally exempt under section 47E(d).

#### *Public interest – Section 11A(5) of the FOI Act*

As the information is conditionally exempt, I have considered whether access to the information would, on balance, be contrary to the public interest having regard to the FOI Guidelines. While a relevant public interest factor which favours disclosure is the promotion of the objects of the FOI Act, through facilitating and promoting public access to information held by Government, release of the information does not add to the public scrutiny of government functions. A relevant public interest factor against disclosure is that use of the information could critically delay the access of members of the public to the services of the Tribunal. On balance, I consider that the benefit of efficient handling of public contact by the Tribunal must be given greater weight. I therefore find that disclosure of the information would be contrary to the public interest under section 11A(5) of the FOI Act.

#### Section 47F – 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. The FOI Act shares the same definition of 'personal information' as the Privacy Act 1988, which regulates the handling of personal information about individuals (section 4(1) of the FOI Act; section 6 of the Privacy Act).

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable. This may include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signatures [FOI Guidelines at 6.124-6.125].

I have reviewed the email chain within scope of your request and have determined that within the chain is sensitive and personal information of an unrelated individual. I have determined that information about this individual is outside the scope of your request as it does not (a) refer to Deputy President Clare Thompson's use of social media or her posts on social media platforms and (b) does not relate to the types of cases and jurisdictional areas within which she would or would not be assigned cases.

I find that disclosure of this personal information would be unreasonable because this information is that of other persons. The Tribunal has obligations to maintain the confidentiality of this information and because the information is not well-known or readily available from publicly accessible sources. The individual[s] who own this information would have a reasonable expectation that their right to privacy be respected and that their personal information is not disseminated to other parties. Therefore, I find that the information is conditionally exempt under section 47F of the FOI Act.

#### *Public interest – Section 11A(5) of the FOI Act*

Having considered the relevance of the public interest factors, including those in section 11B and the guidelines issued by the Information Commissioner, I find that disclosure of this information would, on balance, be contrary to the public interest because it is information of a kind which a person would reasonably wish to have withheld.

Whilst disclosure of information promotes the objects of the FOI Act through facilitating public access to information held by government agencies, this would not include information which could reasonably be expected to prejudice the protection of the individual's right to privacy. On

balance, I consider that the benefit of protecting the individual's right to privacy must be given greater weight than any factor for disclosure. Therefore, I find that disclosure of personal information would be contrary to the public interest under section 11A(5) of the FOI Act.

### Section 24A – Access to documents refused

Access to part (b) of the request is refused under section 24A of the FOI Act. Section 24A provides that, after all reasonable steps have been taken to find the documents, access to documents may be refused if the documents do not exist or cannot be found.

In making my decision I have consulted with the President's Chambers and Deputy President Clare Thompson. I am satisfied that all reasonable steps have been taken and I draw the conclusion that this document does not exist and cannot be produced under section 17 of the FOI Act. I refuse access to this part of the request under section 24A of the FOI Act.

As permitted under section 22 of the FOI Act, redactions to the documents have been made and edited copies have been provided. I have removed any irrelevant or exempt material from the released document.

### Deferred access to the document

The Administrative Review Tribunal (ART) has prepared a response to the Senate estimates hearing held in late November 2024 in relation to the tweets taken on notice. While the Tribunal has prepared its response to the notice, this has yet to be tabled to the Senate. As such, I have had to consider whether to release the document at this stage or defer access to it until the document has been tabled. I have given careful consideration to section 21(1)(c) of the FOI Act and the public interest favouring disclosure of the document. Section 21(1)(c) of the FOI Act states that where an agency decides to grant access to a document, access to the document may be deferred where the premature release of the document would be contrary to the public interest until an event occurs or the period of time expires after which the release of the document would not be contrary to the public interest. In this circumstance, I consider that it would be against the public interest to release the document because it is yet to be tabled before the Senate. To release the document prior to this event would undermine the Tribunal's response to the question taken on notice and would undermine the functions of the Senate and the ministers and agencies responding to such notices. Accordingly, I have decided not to give access to the document until after the tabling of the document to the Senate and its publication to the questions on notice database.

### **Your review rights**

Information about how you can apply for a review of this decision or complain about how we have dealt with this matter is set out in the attached fact sheet, FOI 2.

If you have any questions about this decision, please contact me at [foi@art.gov.au](mailto:foi@art.gov.au).

Yours sincerely,

**April W**

Authorised FOI Officer (APS 6)

**Attachments**

FOI 2 – Information about reviews and complaints under the Freedom of Information Act

# Information about reviews and complaints under the Freedom of Information Act

## What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

## How do I apply for internal review to the AAT?

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

## How do I apply for review to the Australian Information Commissioner?

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website found here: [Information Commissioner Review Application form](#).

## What if I want to make a complaint about the handling of a Freedom of Information request?

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, found here [FOI Complaint Form](#).

## Where can I find further information or contact details for the Office of the Australian Information Commissioner?

Further information is available on the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au) and you can contact the office on 1300 363 992 or by email at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).