



Australian Government

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 21-052

OAIC reference: MR21/00069

To whom it may concern

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To whom it may concern

Revised Decision on access - Freedom of Information Request FOI 21-052 Information Commissioner Review MR21/00069

On 2 February 2022, the Office of the Australian Information Commissioner (**OAIC**) notified the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) that you had applied for Information Commissioner review (**IC Review**) of a decision made by the Department under the *Freedom of Information Act 1982* (**FOI Act**) and issued to you on the FOI Applicant on 30 November 2020.

The Department has been assisting the OAIC with this review since their initial contact with us on 2 February 2022.

Most recently, on 2 August 2024, the OAIC directed the Department, under sections 55T and 55(2)(e)(ii) of the FOI Act:

- By 26 August 2024, provide a marked up, unredacted copy of the document at issue to the OAIC in an electronic format, where material claimed to be exempt is highlighted with reference to the exemptions applied.
- To provide information as outlined at Part 10.100 of the Guidelines issued under s 93A of the FOI Act that relate to this review.
- To take all reasonable steps to notify the affected third party (s 54P(2)). And provide a copy of this notice to the IC as soon as practicable (s 54P(3)).
- To review the FOI decision in light of the passage of time and consider whether any further information can be released to the applicant.
- Provide submissions in support of the FOI decision directly to the applicant and to the OAIC as outlined below.

1 FOI request

1.1 On 24 September 2020, you requested access to:

[The] following for Call of Duty Black Ops Cold War:

- Classifier note;
- Decision document;
- Application for classification and its supporting material;
- Screenshot showing information from the database as seen by the Classification Board;
- Email and its attachment to and/or from applicant, Classification Board, distributor, publisher, developer;
- Form and its attachment to and/or from applicant, Classification Board, distributor, publisher, developer.

1.2 On 8 October 2020, the Department acknowledged your request, and sought clarification on the following:

Where documents found to be within scope of your request contain the names and contact details of employees below Senior Executive Service (SES) level in the Department and/or advisers in the Minister's Office, should you agree, it is proposed that those names and contact details be considered irrelevant to the scope of your request. Grateful if you could please confirm via return email whether you agree to these details being out of scope of your request?

1.3 On 8 October 2020, you responded, indicating that:

If redacting, try to keep the country code of the phone number, first 6 digits (or the BIN) of the credit card number, and only remove the username of the e-mail address.

1.4 The Department identified 36 documents capturing information relevant to your request.

1.5 On 20 October 2020, the Department notified you that some of the documents captured by your request contained business information of a person or organisation (the **affected third party**) and that, pursuant to section 27 of the FOI Act, the Department was required to consult with the affected third party before making a decision on access to those documents.

1.6 The affected third party provided submissions to the Department that information contained with these documents was conditionally exempt from disclosure under section 47 (commercially valuable information); section 47F (personal privacy) and section 47G (business affairs) of the FOI Act, and that disclosure, at that time, would be contrary to the public interest.

1.7 The Department accepted some of the exemption submissions of the affected third party, but also decided to provide access to you to some of the information that the affected third party submitted was exempt.

1.8 On 30 November 2020, the Department issued a decision on access to you, notifying you that the decision maker had decided to grant partial access to 36 documents, exempting some information contained in these documents under section 47F (personal privacy) and section 47G (business affairs), and that disclosure of that conditionally exempt information was contrary to the public interest at that time.

- 1.9 The Department provided you with access to 20 of the 36 documents with the decision, which consisted of internal Departmental documents, which did not contain any personal or business affairs information of the affected third party. (Documents 12-20, 25-33 and 35-36).
- 1.10 As the Department had made a decision to release to you some of the information over which the affected party had made exemption submissions, the affected third party had review rights over that 'access grant' decision.
- 1.11 The affected third party did not seek a review of that decision, and on 27 January 2021, the Department provided you with access to the 16 remaining documents. (Documents 1-12 and 21-24).
- 1.12 You did not request the Department undertake an internal review of its decision on access.

2 Information Commissioner Review

- 2.1 On 2 February 2022, the OAIC notified the Department that it had received an application for IC Review from you.
- 2.2 You indicated in your request for a review that the particular reasons for the review were:
 - s47F personal privacy – some might be agency staff. I think document can be release with only the username of the e-mail address hidden
 - s47G – I do not agree
 - 22 irrelevant – they are part of the document.
- 2.3 You also contested as part of your request for review that the charges had been imposed incorrectly.
- 2.4 On 8 December 2022, the Department issued a notice under section 55G of the FOI Act, waiving the charges originally paid by you, and a refund was facilitated of the payment made.
- 2.5 The Department understands that the matter of the charges has now been resolved, and the matter at issue is your contention that the exemptions applied to the documents released to you should be reviewed.
- 2.6 The Department has reviewed the documents under review, and with the passage of time, is now of the view that additional material can be released to you.

3 Authority to make decision

- 3.1 Section 55G of the FOI Act provides that the Department may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of giving access to a document in accordance with the request.
- 3.2 I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

4 Revised decision on access

- 4.1 I am satisfied that the 36 documents identified in the Original Decision remain the documents captured by your request and that these documents were in the possession of the Department when your FOI request was received.

4.2 Paragraph 10.80 of the FOI Guidelines states:

If the original decision under IC review is a decision refusing to give access to a document in accordance with a request under s 53A(a), the revised decision must have the effect of releasing more material to the IC review applicant. That will include releasing part of a document because a 'document' under s 4(1) of the FOI Act is defined to also include any part of a document. A revised decision may still be an access refusal decision in relation to other material within the scope of an FOI request, as long as the variation is made 'in a manner that favours the applicant'.

4.3 As such, under section 55G of the FOI Act, I have decided to:

- grant greater partial access to 33 documents and
- grant full access to 3 documents.

4.4 A schedule setting out the 36 documents relevant to your request, together with my revised decision in relation to these documents, is at **ATTACHMENT A**. (the **schedule**)

5 Finding of facts and reasons for decision

5.1 My findings of fact and reasons for deciding that parts of the documents fall outside the scope of your request and that exemptions apply to other parts of documents relevant to your request are set out below.

Section 22 – deletion of material from documents released to you

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

5.3 I note from your correspondence of 8 October 2020, you indicated the following:

- You did not agree that names and contact details of employees below Senior Executive Service (SES) level in the Department could be considered irrelevant to the scope of your request
- However, you did agree that:
 - you only required the country code of phone numbers
 - you only required first 6 digits (or the BIN) credit card numbers
 - you agreed to remove the username from email addresses.

5.4 As such, I have regarded that particular information, to the extent to which it appears in the documents, to be outside the scope of your request.

5.5 The emails captured by your request were printed into PDF format as part of the processing procedures associated with an FOI request. When generated in this way, the name of the staff member who has printed these emails appears in the top right hand corner of each document. These names appear within these documents as a result only of this administrative function and were generated after your request was received. I do not consider this information to be relevant to your request. As such, I consider this information can reasonably be regarded as outside the scope of your request and therefore irrelevant to it.

5.6 In addition, documents numbered 8, 9, 13 and 14 in the schedule contain lists of titles being considered by the Classification Board (the **Board**) at the same time as the title relevant to your FOI request. These titles do not relate to your request or the title the subject of your FOI request. I consider these titles,

and the information associated with them and contained in these documents, can reasonably be regarded as outside the scope of your request and therefore irrelevant to it.

- 5.7 An edited copy of the documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act deleting irrelevant material from the documents. This information is marked 's22' in the documents released to you.

Section 47E - Documents affecting certain operations of agencies

- 5.8 Section 47E of the FOI Act 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 or assessment of personnel by the Commonwealth or by an agency.
- 5.9 The Department has statutory obligations under the *Work Health and Safety Act 2011 (WHS Act)*, including a primary duty of care, so far as is reasonably practicable, to ensure that persons are not put at risk from work carried out as part of the conduct of the Department. It is the aim of the Department's Work Health and Safety framework to protect workers and other persons against harm to their health, safety and welfare through elimination or minimisation of risks arising from work.
- 5.10 I am satisfied that disclosure of the personal information of public servants contained in the documents relevant to your request may substantially and adversely affect the Department's ability to meet its statutory obligations under the WHS Act in that release of this information could cause harm to the affected staff's physical and mental wellbeing. There is therefore a protective element to my decision to ensure that departmental staff are not subjected to inappropriate risks or harm.
- 5.11 I am satisfied that, because of the nature of the work performed by staff within the Classification Branch, disclosure of their information may pose a real risk to the health and safety of those staff.
- 5.12 The Department's Classification Branch provides administrative support to the Board¹. The work undertaken by the Board can, at times, be divisive, and there have been real, not perceived, instances of staff being threatened, harassed and intimidated by members of the public. The Board and the Department have external facing contact points including phone and email addresses for the community to contact the both the Department and the Board in a safe and efficient way². These general contact details are readily available, including being published on the both the Department and Classification websites.
- 5.13 These specific channels of communication have been put in place to enable the Department and the Board to effectively manage resources and protect the wellbeing of staff. They are resourced to manage enquiries from members of the public, with staff appropriately trained to manage these types of enquiries. It is reasonable to expect that if these channels of communication were by-passed, the Department would experience a diversion of its resources, and in addition, the management functions of the agency and its personnel would be detrimentally impacted.
- 5.14 As such, I am satisfied that parts of the documents marked 's47E(c)' relate to the Department's management of its staff, and their workplace health and safety.
- 5.15 I am satisfied that parts of the documents marked 's47E(c)' would, or could reasonably be expected to have, a substantial adverse effect on the management or assessment of personnel by the Department, and these reasons I have decided that parts of the documents marked 's47E(c)' are conditionally exempt from disclosure under section 47E of the FOI Act.

¹ www.classification.gov.au/about-us/classification-branch

² www.classification.gov.au/contact-us

- 5.16 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.

Section 47F – Documents affecting personal privacy

- 5.17 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

- 5.18 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.
- 5.19 Paragraph 6.126 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.
- 5.20 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.
- 5.21 An individual is a natural person rather than a corporation, trust, body politic or incorporated association.
- 5.22 As such, I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

Unreasonable Disclosure of Personal Information

- 5.23 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.
- 5.24 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.

5.25 I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984] AATA 437* at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

5.26 Paragraphs 6.137-6.139 of the FOI Guidelines state:

6.137 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.138 As discussed in the IC review decision of '*FG*' and *National Archives of Australia [2015] AICmr 26*, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

6.139 The leading IC review decision on s 47F is '*BA*' and Merit Protection Commissioner in which the Information Commissioner explained that the object of the FOI Act to promote transparency in government processes and activities needs to be balanced with the purpose of s 47F to protect personal privacy.

5.27 An OAIC paper published in August 2020 and titled '*Disclosure of public servant details in response to a freedom of information request*' noted the evolution of the digital environment and the risks this created for public servants.

5.28 Relevantly, paragraph 6.148 of the FOI Guidelines states the Information Commissioner's view that agencies and ministers should start from the position that including the full names of staff in documents released in response to FOI requests increases transparency and accountability of government and is consistent with the objects of the FOI Act.

5.29 However, this position has been rejected by Deputy President Forgie³ in the Administrative Appeals Tribunal (AAT), who accepted that the words of section 47F should be the starting point of any consideration of the application of this conditional exemption. Deputy President Forgie noted:

³ *Chief Executive Officer, Services Australia and Justin Warren [2020] AATA 4557 (Warren)*, [paragraph 83]

The whole of the FOI Act is a finely tuned balance between two interests. In one side of the balance is the facilitation and promotion of access to a national resource that is information held by Government, which enables increased public participation in Government processes and increased scrutiny, discussion, comment, and review of the Government's activities. In the other is the protection of the national interest, the essential operation of government and the privacy of those who deal with government. It is most important, therefore, that its provisions be read very carefully and that presumptions should not be introduced that are not expressed, or necessarily implicit, in the words Parliament has chosen to achieve the balance that it wants. Those words should be the starting point of any consideration rather than any presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and increases the objects of the FOI Act.

Most recently, on 5 February 2024, the views of Deputy President Forgie were also adopted by Senior Member C. J. Furnell in the AAT, stating, at paragraph 46 that:

While a person's right of access to a document is not affected by the person's reasons for seeking access, disclosure may be unreasonable if it has "...no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed."⁴

- 5.30 I do note that the FOI Guidelines⁵ suggest that a public servant's first name alone would not reasonably identify them and would not be considered personal information for the purposes of section 47F.
- 5.31 I also note that section 93A of the FOI Act states that I must have regard to any guidelines issued by the Information Commissioner, and as such, they do not bind a decision maker.
- 5.32 I am swayed, in this instance, by the decisions made in the AAT referred to above.
- 5.33 I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:
- the conditionally exempt personal information is not well known
 - the individuals to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
 - the conditionally exempt personal information is not available from publicly accessible sources
 - the individuals whose personal information is contained in the documents are identifiable
 - release of this information would cause stress to the individuals concerned
 - no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of the individuals' employment circumstance, and arises from the administrative nature of the duties of those staff, and does not in any way advance the public interest in government transparency and integrity anticipated by the FOI Act, as these individuals had no authority to make decisions in relation to the classification of the title which is the subject of your FOI request
 - the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and

⁴ Re Vangel Colakovski v Australian Telecommunications Corporation [1991] FCA 152; 100 ALR 111 13 Aar 261 29 FCR 429/23 ALD 1 (17 April 1991) [paragraph 4]

⁵ paragraph 6.147

- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

5.34 I have consulted with affected third parties regarding the disclosure of the personal information of individuals employed by the affected third party organisation, and I have considered the concerns raised by the affected third party during the course of making my decision.

5.35 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.

5.36 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.

Section 47G – Business information

5.37 Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

Business information

5.38 Paragraph 6.181 of the FOI Guidelines states that the conditionally exempt information must have some relevance to the business, commercial or financial affairs of an organisation or undertaking.

5.39 Paragraph 6.191 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

5.40 The information contained in the documents and marked 's47G' contains business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

5.41 This information is the same single word throughout the documents. It is a code name used by the affected third party during their application to the Board for classification of the title the subject of your FOI request.

5.42 As such, I am satisfied that this information is business information.

Unreasonable adverse effect of disclosure

5.43 Paragraph 6.184 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

- 5.44 Paragraph 6.185 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.
- 5.45 I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made. These submissions include:
- (a) code names are routinely used by the affected third party, and other organisations, to identify individual games internally and in confidential settings both prior to and after launch of titles
 - (b) the code names operate as surrogate game titles prior to the announcement of the title and existence of a particular game
 - (c) release of this information could reasonably be expected to give actors with malicious intent who seek to gain unauthorised access to the affected third parties systems a starting point for discovery of information about a particular game and connected products, including trade secrets, intellectual property, and other confidential business information
 - (d) code names are often themed depending on a particular franchise, and the disclosure of one code name could lead to other code names being discovered, or speculated upon
 - (e) the impact to the business affairs of the affected third party in this way would unreasonably affect the development cycle and processes, and their ability to be competitive and offer consumers the best possible product, in a highly competitive market.
- 5.46 As such, I am satisfied that the disclosure of the business affairs information (albeit, one word throughout the documents) would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.
- 5.47 For the reasons outlined above, I decided that parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.
- 5.48 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.

Public interest considerations

- 5.49 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.
- 5.50 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

5.51 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:

- 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.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- 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

5.52 I consider that the following factors weigh against disclosure of the personal information contained in the documents under review at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the management function of an agency and would prejudice the Department's ability to meet its statutory obligations and responsibilities in relation to the work health and safety of its employees, and
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy.
 - I consider that the placing of the personal information of individuals who work for the Classification Branch of the Department into the public domain has the potential to place those individuals at risk of harassment, abuse, threats and intimidation.
 - As mentioned in paragraph 5.30 above, whilst the FOI Guidelines⁶ indicate that the disclosure of a public servant's first name would not be unreasonable, I consider that the disclosure of this information would be of little to no value to you.
 - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information.

⁶ Paragraph 6.147

- (iv) The release of the names of public servants, and the names of individuals employed by the affected third party, will not provide any insight into the decision made by the Board in the classification of the title, nor will it add any value to the scrutiny, discussion, comment and review of the Government's activities in that regard.
 - (v) The disclosure of this information would be detrimental to the individuals concerned, and potentially also their families. I consider that mitigating this risk is even more important today, with the prevalence of social media and technology allowing individuals to be more easily identifiable and contactable in online environments.
 - (vi) I consider that the harm that would reasonably be expected to arise far outweighs any benefit that would arise from providing this information to you.
 - (vii) The substance of the documents has been released to you and that substance, in and of itself, meets the objects of the FOI Act in terms of increasing scrutiny, discussion, comment and review of the Government's activities.
 - (viii) I consider these factors weigh strongly against disclosure of any public servant's names, together with the names of the employees of the affected third party company.
- (c) In considering the public interest in disclosing public servants' personal information to you, I have taken into consideration the following factors that weigh against disclosure of the conditionally exempt information at this time:
- (i) the type of work undertaken by the relevant staff
 - (ii) the fact that the relevant staff were not discharging powers, making decisions or exercising functions that impact on the rights and entitlements of members of the community
 - (iii) the fact that the relevant staff details are included in the documents merely as a result of administrative support functions, such as secretariat support to the Classification Board
 - (iv) the particular circumstances of the relevant staff such that the staff members may be vulnerable to, or at greater risk of harm, if their name and contact details are disclosed due to the nature of the work undertaken by the Classification Branch within the Department
 - (v) the fact that the relevant staff details are not publicly available, including in the Government Online Directory.

5.53 I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

5.54 I also consider it is firmly in the public interest that the Department meet its statutory obligations and responsibilities in relation to the work health and safety of its employees.

5.55 I consider that the public interest in increasing participation in government processes or in increasing scrutiny, discussion, comment and review of Government decision making is not advanced by the release of the personal information contained in the documents.

5.56 This is consistent with the findings of the Administrative Appeals Tribunal^{7/8}.

5.57 I also consider that the following factors weigh against disclosure of the business information contained in the documents under review at this time, on the basis that disclosure could reasonably be expected to adversely impact the preservation of the ongoing viability of the affected third-party business and other associated business in a broader sense.

- (a) Evidence of the existence, at the time of the classification application, on an embargo is apparent within the documents, but with the passage of time, the game title is now well established and known.
- (b) The code name is not and is only known to those that need to know it.
- (c) Releasing the code name to you will not add any value to the scrutiny, discussion, comment and review of the Government's activities in regard to the classification of this title.
- (d) The codename was provided to the Department on a "need to know" basis, and was managed by the Department in that context. Access to Board information, managed by the Classification Branch through its provision of secretariat services to the Board, follows the Department's restriction of access to that information by approved employees only. That access is strictly managed on a 'need to know' basis, based on specific work functions. The department allows access to its record keeping systems via a standard three factor authentication process to protect information held by it.
- (e) Providing the conditionally exempt business information beyond those that have a need to know would not add any value to the scrutiny, discussion, comment and review of the Government's activities in regard to the classification of this title.
- (f) I consider the harm in disclosing information to you, which was provided to the Department solely for the purposes of seeking classification of a particular title, far outweighs any public interest in releasing it. The information was provided to the Department for a specific intended purpose, to identify an as yet unpublished title. I am satisfied that there is no furtherance of the objects of the FOI Act in releasing that discrete information to you.

5.58 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

5.59 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.

⁷ Warren and Chief Executive Officer, Services Australia (Freedom of Information) [2020] AATA 4557

⁸ Shafran; Secretary, Department of Veterans Affairs and [2024] AATA 115 (5 February 2024)

Section 22 – deletion of material from documents released to you

- 5.60 Section 22 of the FOI Act applies to documents containing exempt material and allows an agency to delete such material from a document.
- 5.61 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.

6 Further information

- 6.1 If the Department is able to assist the Information Commissioner any further with this review, or requires additional information regarding this review, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely



Mitchell Cole
Assistant Secretary
Classification Branch
Online Safety, Media & Platforms Division

Date: 23 August 2024

SCHEDULE OF DOCUMENTS FOI 21-052

Doc No.	Num of Pages	Date of document	Description of document	Original decision on access	Provision of FOI Act	Revised decision on access	Provision of FOI Act
1.	2	2 Sept 2020	Activision to Department Embargo Request With Attachment: <ul style="list-style-type: none"> Letter from Activision 	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
2.	3	2 Sept 2020	Department to Department Embargo request for your approval With Attachment: <ul style="list-style-type: none"> Letter from Activision - (Duplicate of Attachment to Document 1 above) 	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
3.	2	3 Sept 2020	Department to Department RE: Embargo request for your approval	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
4.	3	3 Sept 2020	Department to Activision RE: Embargo Request <ul style="list-style-type: none"> With Attachment: Classification EFT Bank Details Template 	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
5.	3	4 Sept 2020	Activision to Department RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
6.	3	4 Sept 2020	Department to Activision RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
7.	4	4 Sept 2020	Activision to Department RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
8.	3	7 Sept 2020	Department to Department Applications on hand – Monday 7 September 2020	Third party review rights applied Release in part	s22, s47F, s47G	Greater access granted in part	s22, s47F, s47G

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Doc No.	Num of Pages	Date of document	Description of document	Original decision on access	Provision of FOI Act	Revised decision on access	Provision of FOI Act
9.	3	7 Sept 2020	Department to Department RE: Applications on hand – Monday 7 September 2020	Third party review rights applied Release in part	s22, s47F, s47G	Greater access granted in part	s22, s47F, s47G
10.	4	7 Sept 2020	Activision to Department RE: Embargo Request Attachment:	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
	2	7 Sept 2020	<ul style="list-style-type: none"> 7 Sept 2020 Activision to Department RE: Receipt for your classification/training payment Attachment: <ul style="list-style-type: none"> Receipt 				
11.	5	7 Sept 2020	Department to Activision RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
12.	1	7 Sept 2020	Department to Department Completed Applications – Monday 7 September 2020	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
13.	3	10 Sept 2020	Department to Department Applications on Hand – Thursday 10 Sep 2020	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
14.	3	11 Sept 2020	Department to Department Applications on Hand – Friday 11 September 2020	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
15.	1	11 Sept 2020	Activision to Department RE: Certificate email	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
16.	2	11 Sept 2020	Department to Activision RE: Certificate email Attachment:	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
	3		<ul style="list-style-type: none"> Decision Report – Games 				
17.	2	11 Sept 2020	Activision to Department RE: Certificate email	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
18.	3	14 Sept 2020	Activision to Department RE: Certificate email Attachment:	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
	2		<ul style="list-style-type: none"> Classification Certificate 				

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19.	3	16 Sept 2020	Activision to Department RE: Certificate email	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
20.	4	16 Sept 2020	Department to Activision Call of Duty: Black Ops Cold War – Change of Programmer	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
21.	5	22 Sept 2020	Activision to Department RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
22.	7	23 Sept 2020	Department to Department RE: Remove Embargo request. Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
23.	7	23 Sept 2020	Department to Activision RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
24.	6	23 Sept 2020	Activision to Department RE: Embargo Request	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
25.	3	10 Sept 2020	Classifier Notes - File Number: T20/3115 Includes handwritten notes	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
26.	6	10 Sept 2020	Classifier Notes - File Number: T20/3115 Includes handwritten notes	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
27.	6	10 Sept 2020	Classifier Notes File Number: T20/3115 Includes handwritten notes	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
28.	4	10 Sept 2020	Decision Report - File Number: T20/3115	Released in part	s22, s47F, s47G	Greater access granted in part	s47F
29.	2	Undated 2020	Application for Classification of a Computer Game CALL OF DUTY: BLACK OPS COLD WAR	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F
30.	1	Undated	Classification Board Form: Online Interactivity	Released in full		Release in full	
31.	3	Oct 2019	Classification Board Form: Contentious material – computer games	Released in full		Release in full	

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32.	16	Oct 2019	Classification Board Form: Detailed written description of gameplay	Released in full		Release in full	
33.	1	4 Sept 2020	Activision to Department Received package	Released in part	s22, s47F, s47G	Greater access granted in part	s22, s47F, s47G
34.	1	2 Sept 2020	Activision to Department Embargo request letter (duplicate of attachment to Document 1)	Third party review rights applied Release in part	s47F, s47G	Greater access granted in part	s22, s47F, s47G
35.	2	11 Sept 2020	Department to Activision CLASSIFICATION CERTIFICATE FOR A COMPUTER GAME	Released in part	s22, s47F, s47G	Greater access granted in part	s47F
36.	1	Undated	Department Database screen-shot of an Application Search	Released in part	s22, s47F, s47G	Release in full	