



Our reference: FOIREQ21/00263

S Volker

By email: foi+request-8096-a843f100@righttoknow.org.au

Your Freedom of Information Request – FOIREQ21/00263

Dear S Volker

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on 17 November 2021.

In your email you sought access to the following:

I refer to this article concerning corruption engaged in by the Department of the Prime Minister and Cabinet (DPMC) as identified by the Office of the Information Commissioner:

*<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.theguardian.com%2Faustralia-news%2F2021%2Fnov%2F17%2Fprime-ministers-department-breached-foi-laws-over-release-of-brittany-higgins-documents&data=04%7C01%7Clegal%40oaic.gov.au%7C8cfb0b884b484985e5c808d9a97b012e%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C0%7C637727168971267542%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJB>
[Tii6Ik1haWwiLCJXVCIGMn0%3D%7C3000&data=yHLA4Vi2XeErAcSGCKhtU2iZ%2B](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.theguardian.com%2Faustralia-news%2F2021%2Fnov%2F17%2Fprime-ministers-department-breached-foi-laws-over-release-of-brittany-higgins-documents&data=04%7C01%7Clegal%40oaic.gov.au%7C8cfb0b884b484985e5c808d9a97b012e%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C0%7C637727168971267542%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJB)
[a84zOwGhgi75tY75Xw%3D&reserved=0](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.theguardian.com%2Faustralia-news%2F2021%2Fnov%2F17%2Fprime-ministers-department-breached-foi-laws-over-release-of-brittany-higgins-documents&data=04%7C01%7Clegal%40oaic.gov.au%7C8cfb0b884b484985e5c808d9a97b012e%7Cea4cdebd454f4218919b7adc32bf1549%7C0%7C0%7C637727168971267542%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJB)*

Noting the article refers to an investigation conducted by the OAIC into DPMC's compliance with the FOI Act, under the FOI Act I seek a copy of any and all documents given to DPMC by the OAIC pursuant to s.86(2) of the FOI Act in relation to the investigation referred to in the article.

I note that there is a wide public interest in the documents the subject of my request arising from:

- *the vast majority of Australian taxpayers supporting the establishment of a Federal ICAC to deal with public sector corruption such as that identified in the article above;*

- *the investigation alluding to a practice whereby FOI administrative decision-makers at DPMC are acting under dictation from political parties – an illegal practice that would constitute a contravention of the APS Code of Conduct; and*
- *paragraph 6.19 of the FOI Guidelines providing that release of the documents the subject of my request would be in the public interest including because they will “inform debate on a matter of public importance, including to: i. allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official ii. reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct and iii. reveal deficiencies in privacy or access to information legislation.”*

On 25 November 2021, Ms Elena Elagina of the OIAC wrote to you, acknowledging receipt of your FOI request.

On 17 December 2021, Ms Elagina wrote to you to advise that the OIAC was required to engage in third party consultation pursuant to s 27A of the FOI Act in relation to the documents, as the OIAC had identified documents relevant to the personal information of third parties.

Decision

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

Searches were conducted by the Director of the Investigations and Compliance Team in the FOI Regulatory Group to locate documents within the scope of your request and by the Legal Services Team.

I have identified 7 documents falling within the scope of your FOI request, that is, any and all documents given to the Department of Prime Minister and Cabinet pursuant to s 86(2) of the FOI Act in relation to the investigations referred to in the article linked in your FOI request.

I have decided to:

- grant you access in full to 5 documents¹
- grant you access in part to 2 documents.²

¹ Documents 1, 2, 3, 4 and 7.

² Documents 5 and 6.

Please refer to the schedule of documents attached.

Reasons for decision

Material taken into account

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

- your freedom of information application
- the FOI Act, in particular s 47F and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines).

Personal privacy exemption (s 47F)

I have decided that two documents are exempt in part under s 47F of the FOI Act.

The material that I have found to be conditionally exempt under s 47F can be described as the name and contact details of a third-party individual.

Section 47F of the FOI Act conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person. This exemption is intended to protect the personal privacy of individuals.

In the FOI Act, personal information has the same meaning as in the *Privacy Act 1988* (Cth) (Privacy Act). Under s 6 of the Privacy Act, personal information means:

... information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not; and
- b) whether the information or opinion is recorded in a material form or not

I am satisfied that the name and contact details of individuals is personal information for the purposes of the FOI Act.

In determining whether disclosure of personal information would be unreasonable, s 47F(2) of the FOI Act requires me to have regard to the following matters:

- the extent to which the information is well known
- 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

- the availability of the information from publicly accessible sources
- any other matters I consider relevant.

The document contains the names and contact details of individual who lodged an FOI complaint about the Department of Prime Minister and Cabinet.

Based on internet searches I have conducted, I am satisfied that the individual to whom the information relates is not known to be associated with the matters dealt with in the documents and the information is not available from publicly accessible sources or well known.

I also note that the third-party individual objected to the disclosure of their personal information in response to formal consultation in an earlier FOI request for the same material.

I am satisfied that disclosure of this material would be an unreasonable disclosure of personal information.

Therefore, I am satisfied that the name and contact details of the third-party individual who lodged an FOI complaint with the OAIC, and who has objected to the disclosure of their personal information, is conditionally exempt under s 47F of the FOI Act.

The public interest test – s 11A(5)

An agency cannot refuse access to conditionally exempt documents unless giving access would, on balance, be contrary to the public interest (s 11A(5)).

In the AAT case of *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269, Deputy President Forgie explained that³:

... the time at which I make my decision for s 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.

³ *Utopia Financial Services Pty Ltd and Australian Securities and Investments Commission (Freedom of information)* [2017] AATA 269 [133].

In this case, I must consider whether disclosure of the information at this time would be contrary to the public interest.

Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test. The FOI Guidelines at [5.138] include a non-exhaustive list of further factors that favour disclosure. I consider the public interest factors favouring disclosure in this case is that disclosure would promote the objects of the FOI Act.

Against these factors I must balance the factors against disclosure. The FOI Act does not specify any factors against disclosure, however the FOI Guidelines provide a non-exhaustive list of factors against disclosure.

This includes factors such as when disclosure of personal information could be reasonably be expected to harm the interests of an individual or group of individuals and to impede the administration of justice by affecting individuals' willingness to lodge complaints with the OAIC. In this case, I am satisfied that the public interest factors against disclosure outweigh the public interest factors in favour of disclosure.

I have decided that at this time, giving you access to the material, which I have found to be conditionally exempt under s 47F of the FOI Act, would, on balance, be contrary to the public interest.

Conclusion

Please refer to the schedule of documents attached which provides a link for access to documents 5-7, which were subject to a previous FOI request and are already published on the OAIC's disclosure log. Documents 1-4 are attached to this decision in a PDF document.

Please be advised that a summary of the investigations are also available on the OAIC website at <https://www.oaic.gov.au/freedom-of-information/information-commissioner-decisions/freedom-of-information-investigation-outcomes/>.

Please see the following page for information about your review rights and information about the OAIC's disclosure log.

Yours sincerely



Margaret Sui
Senior Lawyer

14 January 2022

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 5218

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 Appeals Tribunal (AAT).

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 AAT, 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 5218

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 FOIDR@oaic.gov.au. More information is available on the [Access our information](#) page on our website.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 of release, except if they contain personal or business information that it would be unreasonable to publish.

Where the third party objected to the disclosure of their personal information, an edited version of the documents with the personal information removed will be published on the OAIC's disclosure log within 10 working days.