



Our reference: FOIREQ22/00422

Attention: Verity Pane

By email: foi+request-9425-6b356fef@righttoknow.org.au

Your Freedom of Information Request – FOIREQ22/00422

Dear Verity Pane,

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 4 December 2022.

In your request you seek access to the following:

'I want copy of the documents released in FOIREQ22/00317 updated as at 1 November, but with the first name field for all staff unreacted and the first initial of the second name unredacted.

This is not just a whim because in correspondence OAIC staff identify themselves by their full name most of the time or by their first name and initial in some occasions. This and their branch is often the only identifying information because position numbers and sections and APS level are not given. This makes it difficult to verify if the person responding is a person authorised to make those decisions as you have to know what APS level and section they belong to to cross check delegations.

The OAIC doesn't treat identical information consistently at all - even if it all ends up on the same disclosure log accessible to anyone. The OAIC will redact information in one foi decision alleging sensitivity while releasing the identical information in another without redaction highlighting that it acts highly inconsistent with the release of such information.

The OAIC goes out of its way to obscure verification of delegation so it needs to provide enough information to enable that to occur.'

On 6 December 2022 we acknowledged receipt of your request via email.

Reasons for Decision

Material taken into account

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

- your freedom of information request dated 4 December 2022,
- your previous request FOIREQ22/00317
- the document at issue,
- the FOI Act, in particular sections 11A(5), 17, 22, 24A, 47E(c) and 47F
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), and
- relevant case law.

Decision

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

I have identified **1 document** within the scope of your request, created under s 17 of the FOI Act. I have decided to release this document to you in part.

Whether reasonable steps taken to find documents – s 24A

Section 24A of the FOI Act requires the OAIC to take “all reasonable steps” to find a requested document before refusing access to it on the basis that it cannot be found or does not exist.

Section 24A provides as follows:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency’s or Minister’s possession but cannot be found; or
 - (ii) does not exist

The FOI Guidelines state:

Agencies and ministers should undertake a reasonable search on a flexible and commonsense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents
- the current and past file management system and the practice of destruction or removal of documents
- the record management system in place
- the individuals within the agency who may be able to assist with the location of documents, and
- the age of the documents.¹

Searches undertaken

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

- People and Culture

Searches were conducted across the OAIC's various document storage systems including:

- the OAIC's case management system - Resolve
- the OAIC's document holding system – Content Manager
- OAIC's email system
- general computer files

Having consulted with the relevant line area and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request, and that no documents were able to be found within the scope of your request.

Document created under s 17 of the FOI Act

As I am satisfied that the documents you have requested do not exist or cannot be found, I have considered whether the OAIC may produce a document under s 17 of the FOI Act containing the information that you have requested.

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* [3.89], footnotes omitted.

Under s 17 of the FOI Act, if an FOI request is made for a document that could be produced by using a computer ordinarily available to the agency for retrieving or collating stored information, an agency is required to deal with the request as if it was a request for written documents to which the FOI Act applies.

Relevantly, the FOI Guidelines at [3.212] state that the obligation to produce a written document arises if:

- *the agency could produce a written document containing the information by using a ‘computer or other equipment that is ordinarily available’ to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and*
- *producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2))*

If those conditions are met, the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency’s possession. Relevant to your request, in the Full Federal Court case of *Collection Point Pty Ltd v Commissioner of Taxation* [2013] FCAFC 67, the Court found at [43]-[44] that the reference in section 17(1)(c)(i) to ‘computer or other equipment that is ordinarily available’ means “...a functioning computer system including software, that can produce the requested document without the aid of additional components which are not themselves ordinarily available ...”

You have requested a “*copy of the documents released in FOIREQ22/00317 updated as at 1 November, but with the first name field for all staff unreacted and the first initial of the second name unredacted*”. This information is not available in discrete form but was able to be produced in a written documents through the use of a computer.

Accordingly, a document has been created under s 17 in response to your request. I have decided to grant partial access to that document.

Management and assessment of personnel (s 47E(c))

I have found material in the document created pursuant to s17 to be conditionally exempt in part under section 47E(c) of the FOI Act. Based on my examination of the relevant document, the exempt material can be described as the first names, first initial of the surnames, and full names of all non-SES OAIC staff members.

Under s 47E(c) of the FOI Act, a document is conditionally exempt if its disclosure could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by an agency.

Section 47E(c) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

The FOI Guidelines explain at [6.114]:

For this exemption to apply, the document must relate to either:

- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback and assessment for bonus or eligibility for progression.

Having considered the material within the document, I consider the relevant material relates to the management of personnel, including the broader human resources policies and activities, recruitment and occupational health and safety.

As a Commonwealth employer the OAIC has duties and obligations under the *Work Health and Safety Act 2011*. This includes a duty to manage workplace health and safety by eliminating and minimising risks as much as is reasonably practicable. Psychosocial hazards are any occupational hazard that affects the psychological and physical wellbeing of employees and includes workplace violence and customer aggression including verbal threats. When engaging with members of the public OAIC staff members can encounter aggression including verbal threats. These threats are not publicly reported. The OAIC has an obligation under the *Work Health and Safety Act 2011* to eliminate the risks associated with psychosocial hazards as much as reasonably practical.

You note the following in your request: *‘in correspondence OAIC staff identify themselves by their full name most of the time or by their first name and initial in some occasions.’*

I note that although OAIC non-SES staff members generally do provide their full name in correspondence with yourself and other members of the public, I would distinguish this scenario with this request, in that you are not seeking access to a limited number of staff names associated with a specific matter related to you. You are seeking the release of all OAIC staff members' names in response to a single request which will be publicly available via the Right to Know website. In my view, the release of this information could be reasonably expected to have a substantial adverse impact on the OAIC's ability to manage risks associated with aggression towards staff. I consider both first names, and the first initial of surnames, as well as full names of all non-SES OAIC staff members conditionally exempt under s47E(c) of the FOI Act.

Personal privacy (s 47F)

I have found material in the document exempt in part under section 47F of the FOI Act. Based on my examination of the relevant documents, the exempt material can be described as the employee (AGS) number of OAIC employee's including their managers employee (AGS) number.

Personal Information

Subsection 4(1) of the FOI Act provides that 'personal information' has the same meaning as in the *Privacy Act 1988* (the Privacy Act).

Under section 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*

An OAIC employee's (AGS) number is a unique identifier provided to all commonwealth government employees. Each employee is only ever provided with one employee (AGS) number throughout their Commonwealth employment, regardless of the number of agencies or period of service. It can be combined with other information to identify an individual. I am satisfied that material described above is 'personal information' for the purposes of s 47F(1) of the FOI Act. Would disclosure involve an unreasonable disclosure of personal information?

When determining whether disclosure of information would involve an unreasonable disclosure of personal information, s 47F(2) provides that a decision maker must have regard to:

- 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, and
- any other matters that the agency or Minister considers relevant.

The FOI Guidelines explain at [6.138] that the test of ‘unreasonableness’ in s 47F ‘implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals’.

Consistent with *FG and National Archives of Australia* [2015] AICmr 26, the FOI Guidelines explain that other relevant factors 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.

An employee (AGS) number is not generally well known, is not publicly available and is not used to identify the position of the employee or indicate the work undertaken by the employee. It is in general used to manage an individual’s employment with the Commonwealth government such as payroll, superannuation, leave and training. On this basis, I consider disclosure would not advance the public interest in government transparency and integrity and would be an unreasonable disclosure of OAIC staff’s personal information. As such, I consider the employee (AGS) number of OAIC employee’s including their managers employee (AGS) number conditionally exempt under s47F of the FOI Act.

The public interest test – s11A(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)). The FOI Guidelines explain that disclosure of conditionally exempt documents is required unless the particular circumstances at the time of decision reveal countervailing harm

which overrides the public interest in giving access. In this case, I must consider whether disclosure of the documents at this time would be contrary to the public interest.

The FOI Act provides a list of factors favouring access in section 11B(3) of the FOI Act. The FOI Guidelines provide a further non-exhaustive list of factors favouring disclosure (see [6.19]). These factors include when disclosure will reveal the reason for a government decision and any background or contextual information that informed the decision and when disclosure will enhance the scrutiny of government decision making. I do not consider that the material that has been identified as exempt under s 47E(c) and 47F of the FOI Act would enhance the scrutiny of government decision making.

The only public interest factor favouring disclosure in this case is that disclosure would promote the objects of the FOI Act generally through promoting access to government held information. Other factors are not relevant.

Against this factor, I must balance the factors against disclosure. The FOI Act does not specify factors against disclosure, however the FOI Guidelines at paragraph [6.22] provides a non-exhaustive list of factors against disclosure. I consider the relevant factors against disclosure are that disclosure could:

- reasonably be expected to prejudice the protection of an individual's right to privacy; and
- reasonably be expected to prejudice the management function of an agency

In weighing up the factors both for and against disclosure, I have considered the OAIC position paper on the disclosure of public servants' personal information in response to FOI requests.² The paper outlined the following key principles:

1. *Transparency and accountability are fundamental to Australian democracy and to the Australian public service. Public servants should be accountable for their decisions, their advice and their actions in the service of the Commonwealth.*
2. *Public servants also have a right to be safe at work and safe from harm as a result of their work.*
3. *The evolution of the digital environment – including its ubiquity, accessibility and longevity – gives rise to new risks for public servants, as well as for citizens. These risks include the traceability and trackability of public servants' personal lives and the risk of physical or online harassment.*

² [Disclosure of public servants' name and contact details in response to FOI requests - Home \(oaic.gov.au\)](#)

4. *Previously existing risks have been compounded by the normalisation of digital communications and publication. Risk may be increased when contact details are published to a wider audience, for a longer period of time, and at no cost, on a digital platform.*
5. *This paper recognises changes resulting from the development of the online environment when balancing the accountability and safety of public servants within the context of disclosures required by the FOI Act.*

Based on the particular circumstances of your request, that you have requested all OAIC staff names and that they will be made available on the Right to Know website, I consider that the factors against disclosure outweigh those factors in favour of disclosure at this time.

I have therefore decided that it would be contrary to the public interest to give you access to the information that I have found to be conditionally exempt under s 47E(c) and s 47F of the FOI Act.

Access to edited copies with exempt matter deleted (s 22)

The documents within the scope of your request contain material which is exempt from disclosure. On this basis, I have prepared the documents for release by removing exempt material in accordance with section 22 of the FOI Act. I have decided to release the full names of SES level staff, given that these have previously been released to you and are within scope.

Conclusion

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

Yours sincerely

Alessia Mercuri
Lawyer

3 January 2023

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 days of release, except if they contain personal or business information that would be unreasonable to publish.

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