



**OFFICE OF THE HON CLARE O'NEIL MP  
MINISTER FOR HOME AFFAIRS  
MINISTER FOR CYBER SECURITY**

**In reply please quote:**

FOI Request: MO22/11/00002  
File Number: ADF2022/359003

Lucas Baird  
Email: [foi+request-9560-ce95f593@righttoknow.org.au](mailto:foi+request-9560-ce95f593@righttoknow.org.au)

Dear Mr. Baird,

**Freedom of Information (FOI) request – Access Decision**

I refer to your correspondence received on 11 November 2022 seeking access to documents held by the Office of the Minister for Home Affairs (the Minister), under the *Freedom of Information Act 1982* (the FOI Act).

**Scope of request**

You have requested access to the following:

*I request, under the purposes of the Freedom of Information Act, any and all written communication between Optus and the Minister's office about its data breach in the week starting September 19. I also request any minutes made of any phone calls/meetings with representatives of Optus, and a log of said phone calls.*

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**Authority to make decision**

I am authorised under section 23 of the FOI Act to make decisions on requests to access documents or to amend or annotate records.

**Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

## Documents in scope of request

The Office of the Minister of Home Affairs has identified four documents as falling within the scope of your request. The Minister's Office undertook reasonable searches and as a result of these searches has identified:

- two documents as falling within the scope of your request – record of calendar entries for meetings
- one document as falling within the scope of your request – correspondence between the Minister and Optus
- one document as falling within the scope of your request – Optus letter to the Minister

These documents were in the possession of the Minister's Office on the 11 November 2022, when your request was received.

## Decision

The Minister's decision in response to your request is:

- To release two documents in part with material exempt under sections 47G(1)(a) and 47F, and material deleted as irrelevant under section 22(1)(a)(ii).
- To release two document in full – record of calendar entries for meetings.

### ***Section 47G of the FOI Act – Business Affairs***

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could be reasonably expected to, unreasonably affect the organization adversely in respect of its lawful business, commercial or financial affairs.

I have considered that the document titled 'Optus document' which contains information concerning the business affairs of Optus. The information is in the nature of a letter from Optus to the Minister containing confidential business information.

In determining whether disclosure of the information within the document would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organization, I have had regard to the following factors:

- (a) The extent to which the information is well known;
- (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the document;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Minister considers relevant.

The information contained within the document is not in the public domain, the organisation concerned is not generally known to be associated with the matters referred to in the document and the information is not available from publicly accessible sources, such as the organisation's website. I am therefore satisfied that the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful

business, commercial or financial affairs.

I have decided that the document referred to above is conditionally exempt under section 47G of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below in this decision.

### ***Section 47F of the FOI Act – Personal Privacy***

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. '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 (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to the third party, Optus.

The FOI Act states that when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to the following four factors set out in s47F(2) of the FOI Act:

- (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 matter dealt with in the document;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Minister considers relevant.

Having considered each of these factors, I consider the information relating to the third party is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individual concerned is not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third party would be relevant to the broader scope of your request, as you are seeking access to communication between Optus and the Minister rather than information, which exclusively relates to the names and details of Optus staff.

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about Optus.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below in this decision.

***Section 22 of the FOI Act – irrelevant to request***

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Minister to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

It is part of the Minister's policy to exclude the personal details of officers not in the Senior Executive Services (SES) of the Department of Home Affairs, as well as the mobile and work telephone numbers of SES staff, contained in the documents that fall within the scope of an FOI request.

As parts of the documents contain the personal contact details of staff of the Department of Home Affairs in the second document titled 'correspondence', I consider this information irrelevant to your request.

I have decided parts of the document as mentioned above and marked s22(1)(a)(ii) would disclose information that could reasonably be regarded as irrelevant to your request. I have prepared an edited copy of the document, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release as this information is relevant to your request.

***The public interest – section 11A of the FOI Act***

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) Promote the objects of the Act (including all the matters set out in sections 3 and 3A)
- (b) Inform debate on a matter of public importance;
- (c) Promote effective oversight of public expenditure;
- (d) Allow a person to access his or her own personal information.

Having regard to the above I am satisfied that:

- Access to the documents would promote the objects of the FOI Act.
- The subject matter of the document does not seem to have a general characteristic of

public importance. The matter has a limited scope and in my view, would be of interest to a very narrow section of the public.

- No insights into public expenditure will be provided through examination of the document.
- You do not require access to the document in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the personal information, in this case Optus, which is conditionally exempt under sections 47F of the FOI Act, could reasonably be expected to prejudice the protection of Optus' right to privacy.
- While you may be aware of the personal information relating to the third party, their information is not well known to the public generally. These documents are not available from publicly accessible sources. I have had regard to the fact that disclosure of information under the FOI Act must be considered a disclosure to the world at large and not just to you the applicant.
- The Minister is committed to complying with their obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Minister must manage personal information. It is firmly in the public interest that the Minister uphold the rights of individuals to their own privacy and meet its obligations under the Privacy Act. I consider that non-compliance with the Minister's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.
- Disclosure of parts of the document that is conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of third party organisations. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- (a) Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) Access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) The author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) Access to the document could result in confusion or unnecessary debate.

Upon balancing all the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

## Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

## Your Review Rights

### Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice.

For further information about review rights and how to submit a request for a review to the OAIC, please see <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews/internal-review>.

## Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Office of the Minister in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Minister of Home Affairs as the relevant agency.

## Contacting the Office of the Minister

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au) quoting reference MO22/11/00002.

Kind regards

Authorised decision maker  
The Office of the Minister for Home Affairs  
[foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au)

26 July 2024