



1 March 2019

BY EMAIL:

**In reply please quote:**

FOI Request: FA 17/11/00141-R1  
File Number: ADF2017/116813

Dear

***Freedom of Information Act 1982 – decision on internal review***

I refer to your request received by the Department of Home Affairs ('the Department') on 6 December 2017 seeking an internal review of a decision made by the Department on 20 November 2017 to refuse access to documents as requested by you under the *Freedom of Information Act 1982* ('the FOI Act').

This letter is to advise you of the Department's decision on your internal review request.

**1 Scope of original request**

The Department received your original request for access to documents under the FOI Act on 3 November 2017. You sought access to the following documents:

*A copy of the resignation letter of chief medical officer John Brayley and any other documentation explaining the rationale for his resignation from his position.*

**2 Original decision on access**

On 20 November 2017, the Department made its original decision on your access request.

The Department identified the following three documents as falling within the scope of your original request:

- Document 1: Email chain containing email sent by Dr John Brayley on 3 September 2017 (1 page)
- Document 2: Email sent by Dr John Brayley on 8 September 2017 (3 pages)
- Document 3: Email chain containing email sent by Dr John Brayley on 26 September 2017 (3 pages)

These documents were in the possession of the Department on 3 November 2017 when it received your FOI request.

The original decision maker decided to refuse access to all three documents on the basis that they were exempt under sections 47C, 47E(c) and 47F of the FOI Act.

### **3 Request for internal review**

On 6 December 2017, you requested the Department review its decision of 20 November 2017. You provided the following reasons for requesting a review:

*I would like to request an internal review of decision FA 17/11/00141, on the grounds that the reasons for the exit of a high-level employee in the department is a matter of public interest. Thank you.*

### **4 Authority to make decision**

I am authorised under section 23 the FOI Act to make decisions on FOI requests, including internal reviews.

### **5 Internal review decision**

I have reviewed the documents that fall within the scope of this request and I have considered your submissions in requesting an internal review.

I have decided to set aside the original decision of the Department of 20 November 2017 and have made a fresh decision on your request. I have decided that:

- the documents described as Documents 1 and 3 are documents that fall within the scope of the request
- the document described as Document 2 does not fall within the scope of the request
- the material in Documents 1 and 3 that the original decision maker deleted under section 22(1)(a)(ii) of the FOI Act is irrelevant to your request
- certain material on page 1 of Document 3 that the original decision maker found to be exempt under sections 47F is exempt under this provision
- certain material on page 2 of Document 3 that the original decision maker found to be exempt under sections 47E(c) and 47F is not exempt under these provisions, but is exempt under section 47C
- the remaining material in Document 3 and all the material in Document 1 that the original decision maker determined to be exempt under sections 47C, 47E(c) or section 47F is not exempt under these provisions
- it is possible for the Department to prepare edited copies of documents 1 and 3, from which it has deleted the exempt and irrelevant material.

The Department will now issue you with edited copies of documents 1 and 3, from which it has deleted the exempt and irrelevant material.

I have provided the reasons for my decision below.

### **6 Reasons for internal review decision: identification of documents within the scope of the request**

The original decision maker determined that Documents 1, 2 and 3 fell within the scope of the request. I have reviewed these documents and determined that Document 2 is not relevant to your request.

Document 2 is an email sent by Dr Brayley on 8 September 2017, the last day of his employment with the Department. The document contains comments from Dr Brayley about matters for which he was responsible in his role as chief medical officer, but does not constitute his notice of resignation nor provide the specific reasons for his resignation.

I have consequently determined that document 2 is not relevant to your request.

I am satisfied that the other two documents are within the scope of your request. Document 1 is the notice of Dr Brayley's resignation (corresponding to the first part of your request), while document 3 is an email in which Dr Brayley provides the reasons for his resignation (corresponding to the second part of your request).

## **7 Reasons for internal review decision: irrelevant material**

### **7.1 Section 22(1)(a)(ii) of the FOI Act – material irrelevant to request**

Section 22(1)(a)(ii) of the FOI Act applies if an agency or Minister decides that giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

I have decided that the parts of documents that I have marked using the 's. 22(1)(a)(ii)' redaction would disclose information that could reasonably be regarded as irrelevant to your request. The material in question is the first sections of documents 1 and 3 and the last sections of document 3.

Both document 1 and document 3 are email chains, the first sections of which contain details of departmental officers forwarding the emails to other parts of the Department, including the FOI section. I consider this information is administrative in nature and does not contain any information that could be regarded as relevant to your request.

The last sections of document 3 contains details of enquiries departmental officers made to Dr Brayley following his resignation but do not contain his notice of resignation or information about the reasons for his resignation. I therefore consider that these sections could reasonably be regarded as irrelevant to your request. In my view, the only section that meets the terms of your request is the email containing Dr Brayley's responses to these enquiries, which could be regarded as a document explaining 'the rationale for his resignation from the position'.

I consider the remaining parts of the documents to be relevant to your request.

## **8 Reasons for internal review decision: conditional exemptions**

### **8.1 Section 47C of the FOI Act--deliberative processes**

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency. 'Deliberative processes' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'<sup>1</sup>

---

<sup>1</sup> See *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

I consider that the material on page 2 of document 3 that I have marked with the 's. 47C' redaction discloses deliberative matter. The material in question refers to deliberations undertaken by the Department during the time that Dr Brayley was chief medical officer and contains Dr Brayley's personal opinion on the matter. The opinion of Dr Brayley does not form part of a decision or conclusion that was reached at the end of any deliberative process undertaken by the Department.

I have decided that the information is conditionally exempt under section 47C 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 turn my mind to the matter of public interest in paragraph 8.3 below.

## **8.2 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.

### Whether document contains personal information

'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 release of information on page 1 of document 3 would disclose personal information relating to a third party. The material in question is the personal email address of Dr Brayley. I consider that this material meets the definition of personal information as defined in section 4 of the FOI Act and section 6 of the Privacy Act.

### Whether disclosure is unreasonable

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *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 available resources;*
- *any other matters that I consider relevant.*

While publicly available resources list a number of email addresses for Dr Brayley, including the email address in question, release of the material in question would have the effect of confirming which address Dr Brayley uses as his personal email address. That information is not in the public domain or otherwise well known. I also consider that adverse consequences for Dr Brayley would result if the email address were released to the public.

Taking these factors into account, I consider the disclosure of information about Dr Brayley would represent an unreasonable disclosure of his personal information and accordingly, I have formed the view that the information referred to above is conditionally exempt under section 47F of the FOI Act.

As access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. In considering this matter concluded

disclosure of the information would be contrary to the public interest and have included my reasoning in that regard below.

### **8.3 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 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 this 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.
- I consider that the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department or reveal the reasoning for a government decision. I consider these considerations as neutral.

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

- I consider that disclosure of the information that is conditionally exempt information under **section 47C(1)** could reasonably be expected to prejudice the management functions of the Department, specifically the capacity of senior departmental officers to share and develop high level advice in the course of formulating policy and making decisions.
- The disclosure of personal information that is conditionally exempt under **section 47F** of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its

obligations under the Privacy Act. I consider that this factor weighs heavily against disclosure of personal information contained within these documents.

I have had regard to section 11B(4) which sets out the factors which are irrelevant to my decision. These factors 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.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

## **9 Reasons for decision: access to edited copies**

### **9.1 Section 22 of the FOI Act – access to edited copies with exempt or irrelevant matter deleted**

Section 22(2) of the FOI Act provides that an agency must provide access to an edited copy of a document when:

- the agency has identified that a document contains exempt or irrelevant material, and
- it is possible for the agency to prepare an edited copy of the document from which it has deleted the exempt or irrelevant material.

As I have explained above, I have determined that documents within the scope of the request contain material that is exempt under one or more sections of the FOI Act or irrelevant to your request.

I have also determined that I am able to prepare edited copies of these documents by redacting the exempt and irrelevant material. I am therefore providing you with edited copies of these documents as is required under section 22(2) of the Act.

## **10 Legislation**

A copy of the FOI Act is available online at the following address:

<https://www.legislation.gov.au/Details/C2017C00251>.

If you are unable to access the legislation through this website, please contact our office for a copy.

## 11 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 Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## 12 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department 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 Department of Home Affairs as the relevant agency.

## 13 Contact

Should you wish to discuss my decision, please do not hesitate to contact the Department via email at [foi.reviews@homeaffairs.gov.au](mailto:foi.reviews@homeaffairs.gov.au).



**Caroline Sternberg**  
**Assistant Secretary**  
**Authorised Decision Maker**  
**Department of Home Affairs**