



19 June 2019



In reply please quote:

FOI Request: FA 18/12/00442
File Number: ADF2018/242781

Dear 

Freedom of Information (FOI) request - Access Decision

On 10 December 2018, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

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

1 Scope of request

You have requested access to the following documents:

In relation to the development and drafting process of the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018:

- 1) a complete list of non-governmental people, organisations and companies consulted prior to the release of the exposure draft and*
- 2) details of when each entity was consulted whether in-person, via teleconference etc, the date on which the meeting/s occurred, the name and title of who was present and the location.*

2 Authority to make decision

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

3 Relevant material

In reaching my decision I referred to the following:

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

- consultation responses from third parties consulted in accordance with the FOI Act
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

4 Documents in scope of request

You have requested access to a list of non-governmental people, organisations and companies consulted prior to the release of the exposure draft and details of when each entity was consulted, whether in-person, via teleconference, the date on which the meeting/s occurred, the name and title of who was present and the location. I am satisfied that the Department does not hold a single document that contains such a “list” of information.

The Department is not required to create a document to meet an FOI request. However, in considering the documents held by the Department, I had regard to the FOI guidelines, which state at paragraph 3.110:

A request can be described quite broadly and must be read fairly by an agency ... being mindful not to take a narrow or pedantic approach to its construction.

I have therefore considered what documents it holds that would satisfy your request.

The Department has identified 39 documents as falling within the scope of your request. These documents were in the possession of the Department on 10 December 2018 when your request was received. They contain the information you are seeking to access, to the extent that the Department holds that information in discrete written documents.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is to release 39 documents in part with deletions.

6 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 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 be exempt from disclosure or reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that is exempt or would reasonably be regarded as irrelevant to the request.

On 12 December 2018, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request. I have also formed a view that the names of the rooms used internally within Government agencies is not relevant to your request.

In addition, I consider that information contained in the documents that goes beyond:

- names of non-governmental people, organisations and companies,
- whether those discussions were in-person or via teleconference
- the dates on which the discussions occurred
- the name and title of who was present and
- the location

is outside the scope of your request and has been regarded as irrelevant to your request.

I have decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request. In addition, exempt information has also been identified. I have therefore prepared an edited copy of the documents, with the exempt and irrelevant material deleted pursuant to section 22 of the FOI Act.

Details of the exempt information is referenced below.

6.2 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. '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 s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

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.*

The information relating to the third parties 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 individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

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

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.

6.3 *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.

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 which 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 non-compliance with the Department's statutory obligations concerning the protection of personal information 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.

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 would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

7 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.

8 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

OR By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

9 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

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.

10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982*

FOI request: FA 18/12/00442

File Number: ADF2018/242781

No.	Date of document	No. of pages	Description	Decision on release	
1.	22.02.2018	2	Email Subject: Legal/Technical meeting with Apple in April	Relevant information released in full	s.22(1)(a)(ii)
2.	19.02.2018	1	Email Subject: Consultation Table Attachment: Encryption Bill External Consultation Table (refer document 3 below)	Relevant information released in full	s.22(1)(a)(ii)
3.	Undated	4	Consultation Table	Release in part	s.22(1)(a)(ii), s.47F(1)
4.	18.02.2018	1	Email Subject: Consultation Table Attachments: <ul style="list-style-type: none"> Encryption Bill External Consultation Table (refer document 3 above) Attachment A - Apple Meeting Summary 11 October 2017 (refer document 5 below) Attachment D – AG Meeting with DIGI – Meeting Summary – 10 August 2017 (refer document 7 below) 	Relevant information released in full	s.22(1)(a)(ii)
5.	11.10.2017	3	Meeting Minutes - AGD, DOCA, AFP representatives with Apple	Release in part	s.22(1)(a)(ii), s.47F(1)
6.	12.10.2017	1	Email Subject: Meeting with the Attorney-General's Department	Release in part	s.22(1)(a)(ii), s.47F(1)
7.	10.08.2017	4	Meeting Summary - Attorney-General's meeting with executives from the Digital Industry Group Incorporated (DIGI)	Release in part	s.22(1)(a)(ii), s.47F(1)

No.	Date of document	No. of pages	Description	Decision on release	
8.	15.02.2018	1	Email: Subject: Consultation table Attachments: <ul style="list-style-type: none"> Attendee Snapshot (refer document 9 below) Briefing - 18 October 2017 (refer document 10 below) DIGI Quarterly Meeting – Secretary’s Meeting Brief – Thursday 10 August 2017 (refer document 11 below) 	Release in part	s.22(1)(a)(ii), s.47F(1)
9.	Undated	3	Attendee Snapshot	Release in part	s.22(1)(a)(ii), s.47F(1)
10.	18.10.2017	8	Attorney-General's Department – Meeting Brief	Release in part	s.22(1)(a)(ii), s.47F(1)
11.	10.08.2017	5	Secretary Meeting Brief – Digital Industry Group Incorporated (DIGI) Quarterly Meeting	Release in part	s.22(1)(a)(ii), s.47F(1)
12.	10.10.2017	2	Email Subject: Meetings	Release in part	s.22(1)(a)(ii), s.47F(1)
13.	10.10.2017	8	Email Subject: Encryption legislative reforms - Apple	Release in part	s.22(1)(a)(ii), s.47F(1)
14.	10.10.2017	1	Email Subject: Meeting pack - TPG and Facebook Attachments: <ul style="list-style-type: none"> CSIB – ESS – Meetings with providers – 27 September (refer document 15 below) 	Relevant information released in full	s.22(1)(a)(ii)
15.	27.09.2018	7	Meeting Brief – AGD, AFP and DoCA meeting with providers – Encryption legislative reforms	Release in part	s.22(1)(a)(ii), s.47F(1)
16.	09.10.2017	1	Email Subject: Vodafone meeting	Relevant information released in full	s.22(1)(a)(ii)
17.	01.08.2018	1	Email Subject: Facebook Meeting with Department of Home Affairs	Release in part	s.22(1)(a)(ii), s.47F(1)
18.	01.08.2018	1	Appointment Subject: Encryption - Meeting with Apple	Relevant information released in full	s.22(1)(a)(ii)

No.	Date of document	No. of pages	Description	Decision on release	
19.	18.07.2018	1	Appointment Subject: Draft legislation - Optus	Relevant information released in full	s.22(1)(a)(ii)
20.	06.08.2018	1	Appointment Subject: Assistance and Access - Follow-up Discussion with Microsoft	Release in part	s.22(1)(a)(ii), s.47F(1)
21.	19.07.2018	1	Email Subject: Andrew Warnes meeting with Facebook	Release in part	s.22(1)(a)(ii), s.47F(1)
22.	26.07.2018	1	Appointment Subject: Amazon Meeting - Encryption	Relevant information released in full	s.22(1)(a)(ii)
23.	16.07.2018	1	Appointment Subject: Telstra Encryption	Relevant information released in full	s.22(1)(a)(ii)
24.	20.07.2018	1	Appointment Subject: Microsoft Meeting	Relevant information released in full	s.22(1)(a)(ii)
25.	26.06.2018	2	Email Subject: FW: 6/29 Call	Release in part	s.22(1)(a)(ii), s.47F(1)
26.	03.07.2018	3	Email Subject: Outcomes of Apple and Home Affairs Meeting - 29 June 2018	Release in part	s.22(1)(a)(ii), s.47F(1)
27.	03.08.2018	2	Email Subject: Meeting Next Thursday	Release in part	s.22(1)(a)(ii), s.47F(1)
28.	06.07.2018	3	Email Subject: Follow up – Industry Roundtable	Release in part	s.22(1)(a)(ii), s.47F(1)
29.	03.07.2018	3	Email Subject: Consultation on legislation	Release in part	s.22(1)(a)(ii), s.47F(1)
30.	02.08.2018	1	Email Subject: Additional Draft Bill comments	Release in part	s.22(1)(a)(ii), s.47F(1)
31.	16.04.2018	1	Email Subject: ACIC attendance at Apple meeting on 26 April 2018	Release in part	s.22(1)(a)(ii), s.47F(1)
32.	12.04.2018	1	Email Subject: Encryption - Meeting with Apple - 26 April 2018 Attachment: Draft Agenda – Meeting with Apple – Encryption – 26 April 2018 (refer document 33 below)	Relevant information released in full	s.22(1)(a)(ii)

No.	Date of document	No. of pages	Description	Decision on release	
33.	26.04.2018	1	Meeting with Apple representatives Encryption	Relevant information released in full	s.22(1)(a)(ii)
34.	19.04.2018	1	Email Subject: Updated attendance list - Encryption - Meeting with Apple - 26 April 2018	Release in part	s.22(1)(a)(ii), s.47F(1)
35.	23.04.2018	6	Email Subject: Meeting on 26 April 2018 regarding encryption	Release in part	s.22(1)(a)(ii), s.47F(1)
36.	09.08.2018	3	Appointment Subject: Amazon Meeting	Release in part	s.22(1)(a)(ii), s.47F(1)
37.	14.08.2018	1	Appointment Subject: Catch up between Ai Group and Dept. of Home Affairs about proposed encryption legislation	Release in part	s.22(1)(a)(ii), s.47F(1)
38.	29.06.2018	1	Appointment Subject: Encryption - Telecon with Apple	Relevant information released in full	s.22(1)(a)(ii)
39.	01.08.2018	1	Appointment Subject: Facebook Meeting with Department of Home Affairs	Release in part	s.22(1)(a)(ii), s.47F(1)