



29 May 2019

In reply please quote:

FOI Request: FA 19/03/00155
File Number: ADF2019/15153

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 4 March 2019, 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:

- 1) *Itemised spending from any departmental issued credit cards to Mr Michael Pezzullo*
- 2) *Documents relating to Mr Pezzullo's compliance with the drug and alcohol testing program*
- 3) *Itemised spending for any office refurbishments, bathroom refurbishments, furniture or artwork for Mr Pezzullo*
- 4) *Itemised spending and class of travel for Mr Pezzullo*
- 5) *Itemised spending of phone bills for Mr Pezzullo*
- 6) *Itemised spending of any departmental and/or ABF uniform items for Mr Pezzullo*
- 7) *Any bonuses paid to Mr Pezzullo*
- 8) *Itemised spending from hospitality authorised, approved or requested by Mr Pezzullo*
- 9) *Itemised cost and details of trips charged to Mr Pezzullo for use of ComCars*
- 10) *Documents relating to internal complaints about Mr Pezzullo*
- 11) *Documents relating to internal complaints made about review requested regarding promotion/s of [REDACTED]*
- 12) *Documents relating to conflicts of interest disclosed by [REDACTED] and*
- 13) *Documents relating to any promotion review requested regarding promotion/s of [REDACTED].*

On 5 March 2019 you clarified the timeframe for the scope of your request is from the 2014/15 financial year onwards, inclusive of the current financial year.

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)

4 Documents in scope of request

The Department has identified one existing discrete document as falling within the scope of part 3 of your request. This document was in the possession of the Department on 4 March 2019 when your request was received.

In addition, in accordance with section 17 of the FOI Act, the Department has used its computer system to produce five documents that contain information that falls within parts 1, 2, 4, 5 and 9 of your request. The data produced in the documents existed in the possession of the Department on 4 March 2019 when your FOI request was received.

In relation to parts 6, 7, 8, 10, 11, 12 and 13, the Department has undertaken reasonable searches in relation to the documents you have requested access to.

Having regard to your request and the types of documents that may fall within the scope of your request I am satisfied that the searches conducted were extremely thorough and all reasonable steps have been taken to locate any document relevant to your request.

5 Decision

Parts 6, 7, 8, 10, 11, 12 and 13

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has undertaken reasonable searches in relation to parts 6, 7, 8, 10, 11, 12 and 13 of your request and that no documents were in the possession of the Department on 4 March 2019 when your FOI request was received. As such I am refusing access to those particular documents requested by you based on the application of section 24A of the FOI Act.

Parts 1, 2, 3, 4, 5 and 9

The decision in relation to the documents in the possession of the Department which have been identified as falling within the scope of your request is as follows:

- Release four documents in full
- Release one document in part with deletions
- Exempt one document in full from disclosure

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

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 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 would reasonably be regarded as irrelevant to the request.

On 5 March 2019, 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 decided that parts of document 3 would disclose information that could reasonably be regarded as irrelevant to your request, including non-SES staff details, and direct contact details of all staff.

I have therefore decided that parts of this document are not relevant to your request and 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 to you as it is relevant to your request.

6.2 Section 47E of the FOI Act – Operations of Agencies

Section 47E(c) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by an agency.

The Department operates in a position of trust with the border environment. In return, the community, the Australian Government and our business partners expect a strong system of integrity, a workplace culture resistant to corruption and with integrity and professional standards of the highest order.

The Department's Professional Standards Framework promotes the high standards of professional conduct expected of the Department's workforce. Contained within the professional standards framework, the integrity framework includes measures designed to protect our workforce from criminal influence and to mitigate the potential for corruption risk. Measures included in the integrity framework include mandatory drug and alcohol testing.

It is noted that during the integration of the former Department of Immigration and Border Protection and the Australian Customs and Border Protection Service, the Department's integrity framework including its Drug and Alcohol Management policy was subject to significant consultation with staff and the Community and Public Sector Union (CPSU). During this process, the Department and CPSU representatives considered significant concerns raised regarding the privacy and security of any personal information held by the Department as part of its Integrity framework. These concerns were addressed by the Department making a series of undertakings regarding the storage and management of information held in relation to its Integrity framework. This has included, for example, the Department segregating work spaces, physical records storage repositories and ICT systems to ensure there can be no unauthorised access to this information. The Department contends that the ability for any individual to circumvent these controls and undertakings through the FOI Act process is likely to seriously degrade the trust and confidence built with staff.

I am satisfied that the disclosure of document 2 would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by this Department.

As such, I have decided that document 2 is conditionally exempt under section 47E(c) 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 at paragraph 6.4 below.

6.3 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*).

Personal Information

I am satisfied that disclosure of the information marked 's47F' in the documents would disclose personal information relating to a third party.

Unreasonable disclosure

In considering whether the disclosure of this personal information would involve the unreasonable disclosure of personal information, I have had regard to the following paragraphs contained in the Office of the Information Commissioner (OAIC) Guidelines, Part 6 – Conditional Exemptions:

- 6.138 *The test of "unreasonableness" implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however amount to the public interest test of s11A(5) of the FOI Act, which follows later in the decision making process.*

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

6.142 *Key factors for determining whether disclosure is unreasonable include:*

- a. *the author of the document is identifiable*
- b. *the documents contain third party personal information*
- c. *release of the documents would cause stress on the third party*
- d. *no public purpose would be achieved through release*

I have also had regard to two leading section 47F IC Review decisions which outlined other factors considered to be relevant, being:

'FG' and National Archives of Australia [2015] AICmr 26

- *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.*

Colakovski v Australian Telecommunications Corporation (1991) 29 FCR 429 in which Heerey J considered that:

'... if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed ... disclosure would be unreasonable'.

Whilst it has not been settled as to whether the motives and identity of the applicant are relevant when considering unreasonableness, the FOI Act provides that a person's right of access is not affected by any reasons why they have sought access to the documents. This would lead to a position that an objective test of balancing public interests should be taken.

In this context, I have had regard to the following paragraphs of the OAIC guidelines:

- 6.153 *Where public servant's personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose, unless special circumstances exists. The guidelines state that this is because the information would reveal only that a public servant was performing their public duties, and notes that such information is often also publicly available, such as on the Department's website.*
- 6.156 *Where an individual has a propensity to pursue matters obsessively and there is no need for them to contact a particular public servant in the future, the disclosure of the public servant's name may be unreasonable*

Having regard to the above, I am satisfied that in this instance, the disclosure of the personal information contained within the documents would constitute an unreasonable disclosure of personal information.

I am of the view that, on balance, the private interests of the individual concerned outweigh any public interest that exists in releasing this government-held information. The information relating to the third party is not well known and would only be known to a very limited group of people with a business need to know. This information is not available from publicly accessible sources.

I am of the view that no public purpose would be achieved through the release of the personal information contained in these documents.

The personal information relating to the third party was "collected" by the Department as part of its usual administrative practices in relation to the administration of its Drug and Alcohol Management policy. The third party was not advised that in undertaking those normal administrative practices, their information may be subject to disclosure under the FOI Act at a later date.

I am satisfied that disclosure of the personal information contained in the document is likely to do no more than excite or satisfy the curiosity of people about the officer whose personal information were to be disclosed.

Whilst disclosure of the information may be regarded as advancing the public interest in government transparency and integrity, I further note that the Department has a strong Professional Standards Framework in place as outlined above. It is entirely appropriate for any question concerning the integrity of any officer of the Department to be managed through that framework.

In light of the above I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information.

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.

6.4 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 not seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- 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 conditionally exempt information under **section 47E(c)** could reasonably be expected to prejudice the ability of the Department to manage and assess its personnel. I consider that the disclosure of this information would result in concerns being raised by staff regarding the privacy and security of personal information held by the Department as part of its Integrity framework. I consider that the loss of trust that would result between staff and the Department would be contrary to the public interest and that this factor weighs strongly against disclosure.
- 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 that individual's 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:

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 19/03/00155

No	Date of document	No. of pages	Description	Decision on release	
1.	Undated	15	Credit Card expenditure by Mr Pezzullo from 2014/15 Financial Year to 26/02/2019	Release in full	
2.	Undated	1	DAMP report	Exempt in full	47E(c) 47F
3.	April 2019	11	Back Pocket Brief Number SB19-000543 Headquarters project and portfolio accommodation	Release relevant information in full	22(1)(a)(ii)
4.	Undated	11	Credit Card expenditure related to travel from 2014/15 Financial Year to 26/02/2019	Release in full	
5.	Undated	1	Monthly total cost of phone bills for Departmental phones allocated to Mr Pezzullo 2015/16 Financial year to Feb 2019	Release in full	
6.	Undated	8	ComCars usage by Mr Pezzullo from 2014/15 Financial Year to 26 Feb 2019	Release in full	