



24/06/2019

In reply please quote:

FOI Request: FA 19/04/00217

File Number: OBJ2019/21549

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 3 April 2019, the Department of Home Affairs (the Department) received a request for access to document 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 document:

A copy of the "ministerial submission on the status of the 2018-19 Internal Budget and budget control measures was sent to the Minister's Office on 20 November 2018" as referred to in the Question on Notice answer AE19/037.

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 document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the document 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 Document in scope of request

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

5 Decision

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

6 Reasons for Decision

Detailed reasons for my decision are set out below. My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 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.'

The document contains advice prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of Department. The document is a Ministerial Submission and was prepared as a confidential document intended only for the audience of the relevant Minister. This advice was provided as part of the functions of both the Department and the Australian government.

Disclosure of this deliberative information could reasonably be expected to inhibit full and frank advice from the Department to its Minister and, as a result, full consideration by both the Minister and the Government on any potential future consideration of similar matters.

I am satisfied that there is a need to maintain confidentiality over deliberative material contained in Ministerial Submissions to ensure that the content of any future Ministerial Submissions are prepared with the necessary frankness, candour and completeness of opinion, advice or recommendation required for such a Submission. The disclosure of such material would have an impact on the preparation of future Ministerial Submissions, if access to the document subject to this request were to be granted.

I am satisfied that the purely factual material, so far as it can be distinguished from the deliberative material, has been considered for release to you. The information does not otherwise fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

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 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

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

Section 47E(d) 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 proper and efficient conduct of the operations of an agency.

I consider that the disclosure of the parts of the document marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department. Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Accordingly, I have decided that the documents are conditionally exempt under section 47E(d) 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 document 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 document would promote the objects of the FOI Act.
- I consider that the subject matter of the document 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 document.

- I am satisfied that 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 document:

Section 47C

- Disclosure of material identified as deliberative could reasonably be expected to prejudice the ability of Departments to provide full and frank advice to relevant Ministers.
- I consider that there is a public interest that the briefing process between the Department and its relevant Minister is not hindered. I am of the view that a precedent of public disclosure of advice given as a part of those confidential briefing processes would result in such concerns existing, which may then hinder future deliberations and decision making processes for the Department and the Government as a whole.
- I consider that the public interest in protecting the process of providing free and frank advice, opinions and recommendations in relation to the functions of the Department and the Portfolio more broadly, to a relevant Minister would, on balance, carry more weight, than the public interest that might exist in disclosing the those actual deliberations.
- I consider that any perceived benefit to the public from the disclosure of the information would be outweighed by the benefit to the public of maintaining the confidentiality of that information, and refusing access to it.

Section 47E(d)

- Disclosure of the material identified as operationally sensitive could reasonably be expected to prejudice operational activities of the Department and, as a result, the ability of the Department to protect Australia's borders. I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its operational activities is not compromised or prejudiced in any way. 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.

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.

6.4 Section 22 of the FOI Act

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request, the Department may prepare an edited copy of the document, modified by deletions, so as to ensure that the edited copy would not disclose any information that would be exempt or irrelevant to the request.

On 3 April 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.

As such, I have decided that:

- the parts of the document marked 's47C' and 's47E(d)' would disclose information that is exempt from disclosure under Part IV of the FOI Act and
- the parts of document marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request.

On that basis, an edited copy of the document has been prepared by the Department for release to you.

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