



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2019/396

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: s22

DECISION BY: Mr Brendan MacDowell
A/g First Assistant Secretary
Ministerial Support Division

s22

Dear s22

I refer to your email of 24 December 2019 to the Department of the Prime Minister and Cabinet (the **Department**) in which you confirmed the revised terms of a request to the Department under the *Freedom of Information Act 1982* (the **FOI Act**) as follows:

I am seeking information under the FOI Act with regard to the following documents held by the Department of the Prime Minister and Cabinet:

- 1. any emails relating to the Prime Minister's personal travel to Fiji in June for a family holiday and to Hawaii in December for a family holiday.*
- 2. a table outlining the taxpayer costs associated with the Prime Minister's personal travel to Fiji in June for family holiday and Hawaii in December for a family holiday.¹*

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Searches for relevant documents

Having regard to the terms of the FOI request and where documents would reasonably be expected to be held, if they existed, inquiries were made with individuals in the Department who would be able to assist with the location of documents, and searches were undertaken of relevant email accounts in the Department.

¹ The terms of the request are numbered for reference purposes.

As a result of these searches, the Department has identified two documents relevant to the scope of the FOI request (the **requested documents**).

Decision

I have decided to:

- refuse access, in full, to Documents 1 and 2 on the basis that they contain information that is exempt under:
 - section 33(a)(i) of the FOI Act (security of the Commonwealth);
 - section 33(a)(iii) of the FOI Act (international relations of the Commonwealth);
 - section 47E(d) of the FOI Act (operations of an agency – proper and efficient conduct); and
 - section 47F of the FOI Act (personal information);
- refuse access to the document relating to Part 2 of the FOI request under section 24A(1) of the FOI Act on the basis that such a document does not exist.

The Schedule at Attachment A contains further information.

In making my decision in this matter, I have had regard to the following:

- the terms of the FOI request;
- the content of the requested documents;
- the FOI Act;
- advice from the Department’s FOI advisers; and
- the ‘Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*’ (the **FOI Guidelines**).²

Reasons

Part 1 of the FOI request

Documents 1 and 2

Section 33(a)(i) of the FOI Act - material affecting national security

Section 33(a)(i) of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to:*
 - (i) *the security of the Commonwealth;*

The FOI Guidelines state that:

‘The term ‘security of the Commonwealth’ broadly refers to:

- a. *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth’s interests*

² FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

- b. *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations.*³

The FOI Guidelines further state that:

'The meaning of 'damage' has three aspects:

- i. *that of safety, protection or defence from something that is regarded as a danger. The Administrative Appeals tribunal has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. *The means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. *The organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*⁴

I am satisfied that disclosure of material contained within Documents 1 and 2 would, or could be reasonably expected to, cause damage to Australia's security if it were disclosed.

Section 33(a)(iii) of the FOI Act – damage to the international relations of the Commonwealth

Section 33(a)(iii) of the FOI Act provides that:

A document is an exempt document if disclosure of the document under this Act:

- (a) *would, or could reasonably be expected to, cause damage to:*

...

- (iii) *the international relations of the Commonwealth;*

The FOI Guidelines state that:

*'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.*⁵

The FOI Guidelines also state that:

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them...

The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible damage, such as loss of trust and confidence in the Australian Government or one of its

³ Ibid, paragraph 5.29.

⁴ Ibid, paragraph 5.31.

⁵ Ibid, paragraph 5.28.

*agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship.*⁶

Documents 1 and 2 contain information that was given and received in the expectation that both parties would maintain confidentiality. I am satisfied that breaching that expectation of confidentiality would, or could reasonably be expected to, cause damage to Australia's international relations. Consequently, I have formed the view that Documents 1 and 2 are exempt under section 33(a)(iii) of the FOI Act.

Section 47E(d) of the FOI Act - certain operations of agencies – proper and efficient conduct

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its 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.

The organisation of ministerial travel, including security arrangements, is a key Departmental function. I am satisfied that disclosure of information contained in Documents 1 and 2 would have a substantial adverse effect on the proper and efficient conduct of the operations of the Department, and other agencies, on the basis that its disclosure would inhibit the Department's ability to prepare material relevant to the Department's responsibilities. I am further satisfied that disclosure of the information contained in Documents 1 and 2 would inhibit the Department's ability to organise, and communicate appropriately and securely with respect to the international travel for ministers and government officials. Therefore, I am satisfied that Documents 1 and 2 are conditionally exempt under section 47E(d) of the FOI Act in full.

Section 47F of the FOI Act – personal information

Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

Section 47F(2) further provides that in determining whether the disclosure of personal information would be unreasonable, an agency must have regard to the following matters:

- a) the extent to which the information is well known;
- b) whether the person to whom the information relates 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 relevant factors.

The term 'personal information' has the same meaning as it has in the *Privacy Act 1988* namely:

... information or an opinion about an identified individual, or an individual who is reasonably identifiable:

⁶ Ibid, paragraph 5.36-5.37.

- (a) *whether the information or opinion is true or not; and*
- (b) *whether the information or opinion is recorded in a material form or not.*⁷

The FOI Guidelines relevantly provide as follows:

*'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'*⁸

*'The information needs to convey or say something about a person, rather than just identify them. The mere mention of a person's name or signature may, however, reveal personal information about them depending on the context.'*⁹

*... '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), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.'*¹⁰

'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.'*¹¹

The FOI Guidelines further provide that the object of the FOI Act of promoting transparency in government processes and activities needs to be balanced with the purpose of section 47F to protect personal information.¹² The FOI Guidelines explain as follows:

*Disclosure that supports effective oversight of government expenditure may not be unreasonable, particularly if the person to whom the personal information relates may have reasonably expected that the information would be open to public scrutiny in future. On the other hand, disclosure may be unreasonable if the person provided the information to Government on the understanding that it would not be made publicly available, and there are no other statutory disclosure frameworks that would require release of the information.'*¹³

After due consideration of the above, I have decided that material contained within Documents 1 and 2 includes personal information for the purposes of the FOI Act. I have also decided that its disclosure would be an unreasonable disclosure of personal information. I have reached the latter conclusion after deciding that it is information which is not well known, that one or some of the person/s concerned is/are not known to be associated with the

⁷ See definition of 'personal information' in section 4(1) of the FOI Act and section 6(1) of the Privacy Act.

⁸ Ibid, paragraph 6.130.

⁹ Ibid, paragraph 6.136.

¹⁰ Ibid, paragraph 6.138.

¹¹ Ibid, paragraph 6.142.

¹² Ibid, paragraph 6.144.

¹³ Ibid, paragraph 6.145.

matters in question, that the information is not available from other publicly accessible sources and its release could inhibit individuals' future private travel arrangements.

After consideration of the above, I have formed the view that information contained within Documents 1 and 2 is conditionally exempt under section 47F of the FOI Act.

Public Interest Test – section 47E(d) and section 47F of the FOI Act

Section 11A(5) of the FOI Act provides that a conditionally exempt document must nevertheless be disclosed to the applicant unless its disclosure would, on balance, be contrary to the public interest.

In determining whether disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors in favour of disclosure against the factors against disclosure.

Section 11B(4) of the FOI Act sets out the following factors that the decision-maker must *not* take into account when deciding whether access to the document would be contrary to the public interest:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in 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 documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- d) access to the document could result in confusion or unnecessary debate.

I have not taken any of the above factors into account in making my decision.

Factor in favour of disclosure

The FOI Act sets out four factors favouring disclosure which must be considered if relevant, namely:¹⁴

- promote the objects of the FOI Act (including all the matters set out in sections 3 and 3A of the FOI Act);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

I consider that a relevant factor from this list is that disclosure could reasonably be expected to promote the objects of the FOI Act.

The FOI Guidelines contain a non-exhaustive list of public interest factors favouring disclosure that may also be relevant in particular circumstances,¹⁵ however there are no additional factors in that list that I consider relevant or that I have not already had regard to above.

¹⁴ See section 11B(3) of the FOI Act and FOI Guidelines, paragraph 6.17.

¹⁵ FOI Guidelines, paragraph 6.19.

Factors against disclosure

The FOI Act does not provide for any public interest factors weighing against disclosure that decision makers may consider. However, in determining whether disclosure would be contrary to the public interest, I have had regard to the FOI Guidelines. The FOI Guidelines contain a non-exhaustive list of factors that, depending on the circumstances of the case, may be against disclosure.¹⁶

I consider that the factors against disclosure in this case are that disclosure of the conditionally exempt material could reasonably be expected to:

- inhibit the Department's ability to properly and efficiently support appropriate security measures being put in place for the protection of the Prime Minister and family;
- prejudice the protection of a number of individuals' rights to privacy; and
- prejudice an agency's ability to obtain similar information in the future.

After careful consideration of all relevant factors, I have decided that, on balance, the factors against disclosure outweigh those favouring disclosure. Accordingly, I am of the view that disclosure of the conditionally exempt information in the requested documents would be contrary to the public interest.

Part 2 of the FOI request

Section 24A(1) of the FOI Act – Documents do not exist

Section 24A(1) of the FOI Act provides that:

An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document;

and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

In relation to what constitutes reasonable steps to find a document, the FOI Guidelines provide as follows:

Agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- *the subject matter of the documents*
- *the current and past file management systems and the practice of destruction or removal of documents*
- *the record management systems in place*

¹⁶ Ibid, paragraph 6.22.

- *the individuals within an agency or minister's office who may be able to assist with the location of documents, and*
- *the age of the documents.*¹⁷

I have copied Part 2 of the FOI request below:

- a table outlining the taxpayer costs associated with the Prime Minister's personal travel to Fiji in June for family holiday and Hawaii in December for a family holiday.

Having regard to the terms of Part 2 of the FOI request and my knowledge of where documents would reasonably be expected to be held, if they existed, I undertook appropriate searches of the Department's records.

As a result of these searches, no documents within Part 2 of the FOI request were found.

I am satisfied that the Department has taken all reasonable steps to identify documents relevant to Part 2 of the FOI request and that no relevant documents exist. I have therefore decided to refuse access to the document requested in Part 2 of the FOI request under section 24A(1) of the FOI Act.

Processing and access charges

I have decided not to impose processing charges in respect of your FOI request.

Review rights

Information about the applicant's rights of review can be found on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Yours sincerely

A large grey rectangular box redacting the signature of Brendan MacDowell. The letters 's22' are visible in the bottom left corner of the box.

060 Brendan MacDowell
A/g First Assistant Secretary
Ministerial Support Division

3/ January 2020

¹⁷ FOI Guidelines, [3.89].

FOI REQUEST: FOI/2019/396

SCHEDULE OF DOCUMENTS

FOI

Document	Decision
1	Exempt in full under section 33(a)(i), section 33(a)(iii), section 47E(d) and section 47F(1) of the FOI Act.
2	Exempt in full under section 33(a)(i), section 33(a)(iii), section 47E(d) and section 47F(1) of the FOI Act.