

s22

From: Gartmann, Petra
Sent: Wednesday, 21 July 2021 4:07 PM
To: Reid, John
Cc: Rush, Peter; s22
Subject: Letter to s47F FOI [SEC=OFFICIAL]

OFFICIAL
 Dear John

Attached is a draft letter for your consideration to s47F .

I will bring you a hard copy for review.

Happy to discuss

Petra Gartmann | Assistant Secretary
 Legal Policy Branch
 Government Division | Department of the Prime Minister and Cabinet
 p. s22

| w.

www.pmc.gov.au <<http://www.pmc.gov.au>>

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

[cid:image001.jpg@01D30607.6CF4DA00] <https://twitter.com/pmc_gov_au> [cid:image002.jpg@01D30607.6CF4DA00] <<https://www.linkedin.com/company/department-of-the-prime-minister-and-cabinet>> [cid:image003.jpg@01D30607.6CF4DA00] <https://twitter.com/indigenous_gov> [cid:image004.jpg@01D30607.6CF4DA00] <<https://www.facebook.com/indigenous.gov.au/>>

Attachments:

Letter to s47F v2 (003).docx	(77 KB)
s47F Timeline.docx	(27 KB)
image001.jpg	(4 KB)
image002.jpg	(4 KB)
image003.jpg	(1 KB)
image004.jpg	(1 KB)



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT

BARTON

s47F

Dear s47F

s 47C, s47E(d)

If you would like to discuss this further, please contact me on s22 .

Yours sincerely

John Reid PSM
First Assistant Secretary
Government Division

July 2021

Attachment A

Section 89L of the FOI Act sets out the grounds on which a declaration can be made:

- (1) *The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:*
 - (a) *that:*
 - (i) *the person has repeatedly engaged in access actions; and*
 - (ii) *the repeated engagement involves an abuse of the process for the access action;*
 - (b) *a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;*
 - (c) *a particular access action in which the person engages would be manifestly unreasonable.*
- (2) *A person engages in an **access action** if the person does any of the following:*
 - (a) *makes a request;*
 - (b) *makes an application under section 48;*
 - (c) *makes an application for internal review;*
 - (d) *makes an IC review application.*
- (3) *The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.*
- (4) *In this section:*

abuse of the process for an access action *includes, but is not limited to, the following:*

 - (a) *harassing or intimidating an individual or an employee of an agency;*
 - (b) *unreasonably interfering with the operations of an agency;*
 - (c) *seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.*

Section 89M of the FOI Act sets out the effect of such a declaration:

- (1) *A vexatious applicant declaration has effect in accordance with the terms and conditions stated in the declaration.*
- (2) *Without limiting subsection (1), a vexatious applicant declaration in relation to a person may provide that:*
 - (a) *an agency or Minister may refuse to consider any of the following if made by the person without the written permission of the Information Commissioner:*
 - (i) *a request;*
 - (ii) *an application under section 48 (amendment of records);*
 - (iii) *an application for internal review; and*
 - (b) *the Information Commissioner may refuse to consider an IC review application made by the person.*

- (3) If a decision is made as mentioned in subsection (2), the agency, Minister or the Information Commissioner (as the case requires) must, as soon as practicable, notify the vexatious applicant of the decision.*

Timeline of contact with s47F or persons lobbying on his behalf for him to be awarded the Humanitarian Overseas Service - 2010 to 2020

11 November 2010

s47F wrote to the then Prime Minister, the Hon Kevin Rudd, to seek his support to have his service as a protection staff for AusAid officials in Iraq by the Humanitarian Overseas Service Medal (HOSM).

18 November 2010

PM&C (Peter Rush) responded on behalf of the Prime Minister that AusAid is not a specified organisation and if he applied it would be based on merit. The organisation he was contracted to Control Risks Group (CRG) is not eligible for the award of the HOSM for service in Iraq.

13 December 2010

Letters of support from AusAID provided to PM&C in support of s47F security services provided to AusAID staff as a contractor.

15 February 2011

s47F wrote the PM&C to request consideration of his application form for the HOSM for his service in Iraq. Attachments include letters of support from AusAID.

20 June 2011

s47F sent another application form for the HOSM claiming he was not engaged as a commercial contractor but as a contracted staff member of AusAID similar to another individual engaged with Sagric International who he asserts received the HOSM for service in Iraq.

22 April 2013

Adam Bandt wrote to the Parliamentary Secretary to the Prime Minister (PSPM) on behalf of s47F requesting he consider the proposal to extend eligibility of the HOSM to commercial contractors of AusAID.

27 May 2013

PSPM replied to Mr Bandt advising he would seek the Minister for Foreign Affairs views. A letter was also sent to Minister for Foreign Affairs seeking his view on s47F proposal.

26 June 2013

The Minister for Foreign Affairs responded to the PSPM advising that the security services provided by s47F and CRG were essential in support of AusAID to field civilian aid. While there is reference to a commercial organisation providing humanitarian aid being a supported precedent, there is no mention of direct not-for-profit humanitarian aid to the civilian population by CRG.

4 August 2013

The Prime Minister calls the election which places the Government in to caretaker mode.

20 September 2013

Following the outcome of the election, Adam Bandt again wrote to the new PSPM seeking an update to the proposal. He also requested that the PSPM provide any briefing from PM&C in regards to this matter.

22 October 2013

PM&C sent a letter to s47F informing him that he remains ineligible for the HOSM for his security services in Iraq as a commercial contractor. He was also advised that the responsible minister has decided not to recommend any changes to the eligibility criteria in this case. A copy of this letter was sent to AusAID/DFAT for their information.

4 December 2013

The PSPM wrote to Adam Bandt advising that he would not be recommending any changes to the eligibility criteria to the Iraq declaration for the HOSM. The PSPM advised it is not standard practice to provide PM&C briefing with their response, however, Mr Bandt would be welcome to request this information under Freedom of Information (FOI).

6 June 2017

Senator Skye Kakoschke-Moore wrote to the Minister for Foreign Affairs seeking support for the HOSM eligibility to be extended to CRG for service in Iraq. The correspondence was referred to the Prime Minister's portfolio for response. The Minister responsible for Australian honours policy because the Assistant Minister to the Prime Minister (AMPM).

6 September 2017

The AMPM responded to Senator Skye-Kakoschke-Moore advising that CRG was contracted to provide security services to the Australian contingent and was not engage to directly provide humanitarian services.

16 September 2019 to 23 October 2019

s47F contacts PM&C to seek advice about the Australian honours system and the creation of the HOSM. Various exchanges to answer his administrative questions occur

10 October 2019

s47F contacts the new Minister for Foreign Affairs to seek support again for CRG to be awarded the HOSM for their security service in Iraq. This correspondence is later referred to the Prime Minister's portfolio for consideration and response.

29 November 2019

PM&C responded to s47F advising him that CRG is not an eligible group for the purposes of the HOSM as a commercial contractor to AusAID that was paid to provide security service in support of operations in Iraq

28 October 2019

s47F contacts Mr Andrew Hastie MP to seek assistance in advocating for CRG to be awarded the HOSM for their security service in Iraq. This correspondence is later referred to the Prime Minister's portfolio for consideration and response.

13 December 2019

s47F contacts PM&C to seek advice regarding an avenue of external review for consideration of extending the HOSM to members of CRG for their security services provided to AusAID in Iraq.

3 May 2020

The AMPM responded that CRG is not an eligible group for the purposes of the HOSM as a commercial contractor to AusAID that was paid to provide security service in support of operations in Iraq. He also advised he is not recommending changes for a medal that recognises members of not-for-profit organisations providing emergency humanitarian aid.

27 May 2020

A friend of s47F wrote to the AMPM to advocate on behalf of s47F and CRG for adding CRG to the HOSM eligible groups for service in Iraq. This individual did receive the HOSM for service as a part of an eligible organisation.

17 June 2020

The AMPM responded advising that he has no intention of recommending the extension of eligibility for the HOSM to CRG for providing security services to the Australian contingent to Iraq.

12 October 2020

s47F contacts PM&C to request access to the PM&C Secretary's instrument of delegation relating to the HOSM. The delegation is to treat a period of service as eligible service and recommend the award of the Medal

s22

From: Reid, John
Sent: Friday, 23 July 2021 11:09 AM
To: Gartmann, Petra
Cc: Rush, Peter; s22
Subject: RE: Letter to s47F - FOI [SEC=OFFICIAL]
Attachments: Letter to s47F v2 (005).docx

OFFICIAL

Thanks Petra, Rush,
 Attached is a draft, with some amendments from me (sorry, not tracked!)

Let me know what you think; if we're all happy with this, I'll run it past Stephanie before it goes out.

Cheers,
 JR

From: Gartmann, Petra s47F
Sent: Wednesday, 21 July 2021 4:07 PM
To: Reid, John s47F
Cc: Rush, Peter <s47F>
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Australian Government
Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

s47F

[Redacted]

[Redacted]

Dear s47F

[Redacted]

[Redacted]


[Redacted]

[Redacted]

[Redacted]

[Redacted]

s47C, s47E(d)



Yours sincerely

John Reid PSM
First Assistant Secretary
Government Division

July 2021

s22

From: Rush, Peter
Sent: Friday, 23 July 2021 12:22 PM
To: Reid, John; Gartmann, Petra
Cc: s22
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BARTON

s47F

[Redacted]

[Redacted]

Dear s47F

[Redacted]

s47C, s47E(d)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s47C, s47E(d)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Yours sincerely

John Reid PSM

First Assistant Secretary
Government Division

July 2021

s22

From: Reid, John
Sent: Friday, 23 July 2021 3:26 PM
To: Rush, Peter; Gartmann, Petra
Cc: s22
Subject: RE: Letter to s47F - FOI [SEC=OFFICIAL]

OFFICIAL

Thanks Rush. All good amendments. I'll take this version to Stephanie on Monday morning.

Cheers,
JR

From: Rush, Peter s22
Sent: Friday, 23 July 2021 12:22 PM
To: Reid, John s22; Gartmann, Petra s22
Cc: s22
Subject: RE: Letter to s47F - FOI [SEC=OFFICIAL]

OFFICIAL

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Sent: Friday, 23 July 2021 11:09 AM
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Cc: Rush, Peter s22
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I will bring you a hard copy for review.

Happy to discuss

Petra Gartmann | Assistant Secretary

Legal Policy Branch

Government Division | Department of the Prime Minister and Cabinet

p **s22** [redacted]

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Australian Government

Department of the Prime Minister and Cabinet

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BARTON

s47F

By email: s47F

Dear s47F

I write regarding your on-going interest in the award of the Humanitarian Overseas Service Medal (HOSM), specifically in seeking an extension of eligibility for the award to Control Risks Group (CRG) for the HOSM - Iraq Clasp.

The Department has been engaged with you on this subject since 2010, when you wrote to the then Prime Minister, the Hon Kevin Rudd, seeking support in recognising contractors of CRG through the HOSM. Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, responded on the then Prime Minister's behalf. In that response, you were advised of the restrictions on eligibility of commercial contractors or employees of commercial contractors (specified at paragraph 11(c) of the HOSM Iraq Declaration 2004).

As you are aware, there are specific instances in other events where eligibility for the HOSM has been extended to Australians not directly engaged by an eligible organisation. In those cases, the assessment conducted by the Department was able to confirm the merit of the humanitarian service that they provided.

I note the Department considered your application for the award in 2011 and 2013. It is also apparent you were advised by channels outside of the Department, and provided with unauthorised access to a draft departmental brief that indicated staff were considering recommending to the then Parliamentary Secretary to the Prime Minister in 2013 that they agree to extend eligibility to CRG. As you are aware, the Department subsequently altered its position on extension of eligibility to CRG. In particular, on 8 January 2021 the Department gave you access under the *Freedom of Information Act 1982* (the FOI Act) to a copy of a departmental brief of 2013 indicating that the then Parliamentary Secretary to the Prime Minister agreed to the Department's recommendation that eligibility for the 'Iraq' clasp to the HOSM not be extended to a commercial contractor engaged by AusAID to provide security services in support of operations in Iraq.

I note that on 13 December 2019 you contacted the Department to seek advice regarding an avenue of external review for considering extending eligibility for the HOSM to CRG. I further note that on 3 May 2020 the Assistant Minister to the Prime Minister and the Cabinet, the Hon Ben Morton MP, responded to you to advise that CRG is not an eligible group for

the purposes of the HOSM and that the Assistant Minister was not proposing to recommend changes to the HOSM that would enable extension of eligibility to CRG.

CRG remains ineligible for the HOSM as they do not meet the criteria established for organisations under the Letters Patent for the HOSM and Iraq Clasp Declaration. CRG is a for-profit organisation that was engaged to provide security support services to the Australians delivering aid in Iraq in 2004 and were not engaged in directly providing humanitarian services. It is understandable, given recommendations provided by AusAid staff, and the letter of support from former Minister for Foreign Affairs and Trade, the Hon Bob Carr, that you would be disappointed by this outcome.

Since 2019, the Department has received:

- 55 requests related to the HOSM under the FOI Act, of which you have personally submitted at least 29 requests;
- 17 internal review requests related to the HOSM under the FOI Act, of which you have personally submitted at least 8 requests;
- notice of 3 Information Commissioner review applications, of which you have personally submitted at least 1 application.

I add to this that since 2010, outside of the FOI Act, the Department has engaged with you regarding eligibility for the HOSM on multiple occasions.

The volume and frequency of your requests under the FOI Act has imposed a significant burden on a particular area of the Department. Given the very specific subject matter knowledge required, FOI requests relating to the HOSM cannot be distributed beyond a limited number of staff in the operational area. Additionally, these requests are becoming more complex as they can overlap and often relate to the same material. This is increasingly requiring a higher level of scrutiny and consideration over past decisions and documents, not only by a limited number of staff responsible for processing your request in the operational area, but also to specialist FOI case officers allocated to processing your requests.

I appreciate that as an FOI applicant, you have worked respectfully and collaboratively with the Department. However, I would ask that you consider whether continuing to make access requests under FOI Act is achieving your goal while continuing to create a large burden of work for a small amount of Department staff. I sense you are not unaware of this, as you reflected in your email of 21 December 2020 to the FOI team: 'Thanks for all the FOI support this year, we really appreciate it. Sorry it has been a bit unrelenting at times.'

Should you continue to repeatedly engage in access actions under the FOI Act, the Department will consider seeking a vexatious applicant declaration from the Information Commissioner. This action is available to agencies under section 89L of the FOI Act ([Attachment A](#)). Such a declaration has the effect of preventing a person from exercising an important legal right conferred by the FOI Act. For that reason, it would be my strong preference not to pursue such action and instead ask that you re-consider the need to make further FOI requests, or limit these to a more reasonable amount, for example, four requests per year.

If you would like to discuss this further, please contact me on 02 6271 5786.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Reid', with a stylized flourish at the end.

John Reid PSM
First Assistant Secretary
Government Division

28 July 2021

Attachment A

Section 89L of the FOI Act sets out the grounds on which a declaration can be made:

- (1) *The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:*
 - (a) *that:*
 - (i) *the person has repeatedly engaged in access actions; and*
 - (ii) *the repeated engagement involves an abuse of the process for the access action;*
 - (b) *a particular access action in which the person engages involves, or would involve, an abuse of the process for that access action;*
 - (c) *a particular access action in which the person engages would be manifestly unreasonable.*
- (2) *A person engages in an **access action** if the person does any of the following:*
 - (a) *makes a request;*
 - (b) *makes an application under section 48;*
 - (c) *makes an application for internal review;*
 - (d) *makes an IC review application.*
- (3) *The Information Commissioner must not make a declaration in relation to a person without giving the person an opportunity to make written or oral submissions.*
- (4) *In this section:*

abuse of the process for an access action includes, but is not limited to, the following:

 - (a) *harassing or intimidating an individual or an employee of an agency;*
 - (b) *unreasonably interfering with the operations of an agency;*
 - (c) *seeking to use the Act for the purpose of circumventing restrictions on access to a document (or documents) imposed by a court.*

Section 89M of the FOI Act sets out the effect of such a declaration:

- (1) *A vexatious applicant declaration has effect in accordance with the terms and conditions stated in the declaration.*
- (2) *Without limiting subsection (1), a vexatious applicant declaration in relation to a person may provide that:*
 - (a) *an agency or Minister may refuse to consider any of the following if made by the person without the written permission of the Information Commissioner:*
 - (i) *a request;*
 - (ii) *an application under section 48 (amendment of records);*
 - (iii) *an application for internal review; and*
 - (b) *the Information Commissioner may refuse to consider an IC review application made by the person.*

- (3) If a decision is made as mentioned in subsection (2), the agency, Minister or the Information Commissioner (as the case requires) must, as soon as practicable, notify the vexatious applicant of the decision.*

s47F

From: FOI
Sent: Thursday, 29 July 2021 5:34 PM
To: Reid, John; Rush, Peter; Gartmann, Petra
Cc: FOI
Subject: FW: Letter from Department of the Prime Minister and Cabinet [SEC=OFFICIAL]
Attachments: Letter from John Reid to s47F 29.07.2021.pdf

OFFICIAL

Hi colleagues

For information, the attached letter has been sent to s47F.

Regards

s22 | Adviser

FOI Section | Legal Policy Branch

Government Division | Department of the Prime Minister and Cabinet

p. s22

| w. www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

From: FOI
Sent: Thursday, 29 July 2021 5:17 PM
To: s47F
Cc: FOI
Subject: Letter from Department of the Prime Minister and Cabinet [SEC=OFFICIAL]

OFFICIAL

Dear s47F

Please see attached letter from Mr John Reid PSM, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet.

Yours sincerely

FOI Section | Legal Policy Branch

Government Division | Department of the Prime Minister and Cabinet

p. (02) 6271 5849

e. foi@pmc.gov.au | w. www.pmc.gov.au

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The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

s22

From: FOI
Sent: Friday, 30 July 2021 9:41 AM
To: Reid, John; Rush, Peter; Gartmann, Petra
Cc: FOI
Subject: FW: Letter from Department of the Prime Minister and Cabinet [SEC=OFFICIAL]
Attachments: Letter from John Reid to s47F 29.07.2021.pdf

OFFICIAL

Dear colleagues

Please email below.

Regards

s47F | Adviser
 FOI Section | Legal Policy Branch
 Government Division | Department of the Prime Minister and Cabinet
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 e s22 | w. www.pmc.gov.au
 One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

-----Original Message-----

From: s47F
Sent: Thursday, 29 July 2021 7:36 PM
To: FOI
Subject: Re: Letter from Department of the Prime Minister and Cabinet [SEC=OFFICIAL]

Dear Mr Reid,

Thank you for your letter informing that the department is considering seeking a vexatious applicant declaration from the Information Commissioner. We are unable to agree with some of what you have said in your letter and will welcome the opportunity to respond to the Information Commissioner.

We thank the department for acknowledging our FOI requests have always been collaborative and respectful. With the benefit of hindsight we agree some of our FOI requests may have been onerous. We ask the department to take into account that the public does not benefit from FOI legislation training. Thus every FOI request is a learning experience.

We ask the department to consider the unusual situation we find ourselves in. Many of the documents the department refuses to release to us were already released to us by AusAID. Moreover several FOI disclosures reveal the department advised government that they would do certain things that they did not do. Other disclosures reveal

favourable material evidence was withheld from us. Other disclosures show some of the department's advice is based on unsubstantiated personal assertions some of which are very unreasonable. This is not an exhaustive list.

We believe public scrutiny is very reasonable given the information revealed via FOI. We respectfully contend our FOI requests reveal very significant deficits in the department's HOSM assessments and related advice to government. They also reveal what appear to be very significant procedural fairness breaches. From what we understand the public is generally entitled to scrutinise and challenge government decisions that affect them.

We will welcome the opportunity to defend our position with the Information Commissioner.

Thank you for your time and consideration.

Kind regards

s47F

s22

From: s47F
Sent: Sunday, 1 August 2021 11:10 PM
To: FOI
Subject: Reply to notice of intent to consider a vexatious declaration application
Attachments: 2021-08-01 s47F _reply to notice of intent to consider a vexatious declaration application.pdf.pages.pdf; ATT00001.txt; Letter from John Reid to s47F 29.07.2021.pdf

Dear FOI,

Please see attached letter.

I will be grateful if you will pass to Mr Reid. Can I ask you confirm it's receipt.

Thank you for your time.

Kind regards

s47
F

1 August 2021

Mr Reid
1st Assistant Secretary
Govt Div - PM&C

Response to notice of intent to consider vexatious declaration application proceedings

Dear Mr Reid,

1. I do not waive my right to request information in accordance with the FOI Act. You imply my requests are vexatious. FOI reveals significant deficits in your department's administrative decision-making in 2004, 2009, 2012, 2013 and more recently. Your department denies external review requests. Public scrutiny is warranted. As is external review of your department's administrative decision-making. I respectfully ask you to expedite your vexatious declaration application. Alternatively I ask you refer the matter to another authority for external review.
2. The root cause at issue occurred in 2004, before the HOSM Declaration for Iraq was drafted. Your department's duties included administrative decision-making in accordance with procedural fairness; providing comprehensive HOSM related advice to government; and undertaking thorough stakeholder engagement, consultations and assessments. FOI reveals your department failed to consult the Australian Agency for International Development (AusAID) or CRG. Both relevant organisations participating in the government's relief operation. Your department failed to accord relevant stakeholders their right to present submissions. Your department failed to advise government on matters related to HOSM regulation 4(1)(b); Regulation 4(2); and Regulation 4(3)(c). They failed to identify and advise government on commercial contractors serving with the Australian contingent to the CPA. Your department held legislative responsibility to comprehensively advise government. AusAID, CRG, DFAT, and the Iraq Task Force did not. Your department advises government that their work is without fault, FOI reveals otherwise.
3. I refute your allegation that I had "*unauthorised access*" to documents. This is untrue and defamatory. I respectfully ask you to retract the allegation, amend documents as required and inform me if your department has made similar allegations about me to other stakeholders. I request remedy if this has occurred. AusAID was an independent statutory government agency. They are responsible for their actions. They exercised discretion and released unclassified documents to me. If you have issue it is appropriate you take it up with them.
4. You allege "*unauthorised access*". Documentary evidence shows a government agency released unclassified documents to me and asked for my input into a deliberative process. I reviewed unclassified documents in the days before the documents were agreed to be sent to the Parliamentary Secretary to the Prime Minister the Hon. Senator Jan McLucas. Relevantly PSPM McLucas was the only person with the prescribed authority to decide on the matters raised in the documents.
5. I refute your implication that we did not provide humanitarian service. HOSM regulation Part 1 (2) state "*humanitarian service means giving immediate remedy or action to assist needy or distressed persons in order to sustain the life and dignity of those persons*". The Letters Patent states "*for the purpose of according recognition to persons who have given humanitarian service in hazardous*

circumstances outside Australia". Two Australian Foreign Ministers, AusAID's Director General and Deputy Director General, medal holders from the contingent in Iraq and your department agreed. FOI reveals your department may have reversed course on unsubstantiated and misleading assumptions. The HOSM Regulations govern the medal. They do not prohibit the medal being awarded to commercial contractors. Your department failed to comprehensively advise government before the 2004 HOSM Declaration for Iraq was drafted.

6. FOI reveals your department broke their agreement with AusAID. They withheld documents from PSPM McLucas in early 2012. Your letter implies this occurred 12 months later in 2013. Relevantly your department failed to inform AusAID of the reversal in agreement. Mr Rush recently stated *"the matter continued to be the subject of consultations and deliberations were not finalised as at the date the Hon Jan McLucas ceased in the role of PSPM"*. You state your department was engaged on this from 2010 to 2012. The documentary evidence shows your department undertook requisite consultations and deliberations before the documents for PSPM McLucas were prepared in early 2012. FOI reveals Mr Rush's statements were sometimes unsubstantiated and misleading. It appears in the public interest to request information to verify consultations and deliberations occurring during PSPM McLucas's tenure.
7. You refer to your department's 26 September 2013 brief as evidence. Your department produced this document around 18 months after they agreed to submit documents recommending PSPM McLucas agree to extend the HOSM to CRG. The 2013 assessment is sub-standard. Your department fought to withhold information from the public but were compelled to release via internal and IC review. FOI reveals the assessment is biased, unfair and omits material facts. Reasoning is sometimes premised on unsubstantiated and manifestly unreasonable assumptions. Your department presented pages and pages of nonsensical documents as evidence for no apparent reason.
8. The Statement of Ministerial Standards states *"Ministers must be able to demonstrate that they have taken all reasonable steps to observe relevant standards of procedural fairness and good decision making application to decision made by them... Ministers are required to ensure that official decisions made by them are unaffected by bias or irrelevant considerations"*. The Law Reform Commission *"procedural fairness means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made"*. The High Court *"in the absence of a clear, contrary legislative intention administrative decision-makers must accord procedural fairness to those affected by their decisions"*. The duty may be excluded by legislation. The HOSM letters patent, regulations and declaration do not appear to do this. Please provide the instrument that excludes your department from the duty to accord procedural fairness in administrative decision-making.
9. Regarding your department's 2009 assessment *"Ref: B09/1640"*. FOI reveals the assessment is manifestly different to other credible published documents. Relevantly your department failed to advise government that GE's contingent included commercial security contractors. I informed Mr Rush of this in 2010/12. The precedent is cited in the documents prepared for PSPM McLucas. I respectfully ask you to acknowledge this. Then advise government that commercial security contractors were among the persons awarded the HOSM in the GE precedent.

10. Referring to the efficacy of your department's assessment Mr Rush states "*The authoritative confirmation of an applicant's claims by the organisation with which the applicant served provides a robust assessment process and enhances the integrity of the HOSM*". Your department states commercial security contractors are unworthy for HOSM recognition. Somehow your department failed to advise government that GE's contingent included commercial security contractors. This brings into question your department's "*robust assessment process*" and "*integrity of the HOSM*" assessments.
11. Thank you for your letter. Again I ask you to retract your allegation that I received "*unauthorised documents*". It is untrue and unsubstantiated. Your implication that my FOI requests are vexatious is without merit. FOI reveals significant deficits in your department's administrative decision-making in 2004, 2009, 2012, 2013 and more recently. Please provide the instrument that excludes your department from their duty to accord procedural fairness in their administrative decision-making. Public scrutiny and external review is clearly warranted. Again I ask you to expedite your vexatious applicant declaration application or refer the matter to another authority for external review.

Thank you for your time.

Kind regards

s47F



cc Federal Representatives
 Federal opposition

s22

From: FOI
Sent: Tuesday, 14 September 2021 11:29 AM
To: Gartmann, Petra
Cc: FOI
Subject: s47F - 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

OFFICIAL
Hi Petra
Draft s47F response below
Thanks s22

Dear s47F

Thank you for your correspondence in this matter dated 1 August 2021 and below, 13 September 2021.

The Department of the Prime Minister and Cabinet acknowledges receipt of this correspondence but will not be responding at this time.

Kind regards

Petra Gartmann
Assistant Secretary | Legal Policy Branch
Government Division | Department of the Prime Minister and Cabinet
Petra.gartmann@pmc.gov.au
www.pmc.gov.au
One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

-----Original Message-----

From: Gartmann, Petra s22 >
Sent: Tuesday, 14 September 2021 7:33 AM
To: FOI <FOI@pmc.gov.au>; Reid, John s22
Cc: s22 Rush, Peter s22
Subject: RE: s47F - 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

OFFICIAL
Thanks s47F

s22

From: Reid, John
Sent: Wednesday, 15 September 2021 4:26 PM
To: Rush, Peter; Gartmann, Petra
Cc: FOI
Subject: RE: s47F 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

OFFICIAL

Yep, what Rush said:

Dear s47F
 Thank you for your correspondence in this matter dated 1 August 2021 and 13 September 2021.

The Department of the Prime Minister and Cabinet notes your comments. No further response will be provided at this time.

FOI (Generic sign-off)

Cheers,
 JR

From: Rush, Peter
Sent: Tuesday, 14 September 2021 4:52 PM
To: Gartmann, Petra ; Reid, John
Subject: RE: s47F - 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

OFFICIAL

?: No further response will be provided at this time.

-----Original Message-----

From: Gartmann, Petra <s47F>
Sent: Tuesday, 14 September 2021 3:11 PM
To: Rush, Peter s47F>; Reid, John <s47F>
Subject: RE: s47F - 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

OFFICIAL

JR - draft reply to s47F for your comments.

 Dear s47F

Thank you for your correspondence in this matter dated 1 August 2021 and 13 September 2021.

The Department of the Prime Minister and Cabinet notes your comments. No further response will be provided.

FOI (Generic sign-off)

-----Original Message-----

From: FOI <FOI@pmc.gov.au>

Sent: Monday, 13 September 2021 8:28 PM

To: Reid, John s22

Cc: Gartmann, Petra s22

Rush, Peter

Subject: s47F 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

OFFICIAL

Dear s47F

Please see below a follow-up inquiry from s47F (received today) requesting a response to his letter of 1 August 2021 (attached) responding to your letter of 28 July 2021 advising that PM&C were considering having him declared a vexatious applicant.

Thanks s22

Dear FOI,

On 28 July 2021, your department served me with a notice of intent to consider vexation declaration proceedings with the Information Commissioner.

On 1 August 2021, I refuted Mr Reid's unsubstantiated allegation and implications. I noted a number very significant errors in your department's administrative decision-making relating to the HOSM. Relevantly I respectfully asked your department to acknowledge and inform Government of a number of procedural fairness breaches and errors in HOSM assessments.

Please confirm receipt of my rebuttal and issue the response letter when ready.

Thank you for your time.

Kind regards

s47F

> On 1 Aug 2021, at 21:10, s47F > wrote:

>

> Dear FOI,

>

> Please see attached letter.

>

> I will be grateful if you will pass to Mr Reid. Can I ask you confirm it's receipt.

>

> Thank you for your time.

>

> Kind regards

>

> s47F

>

>

>

>

s22

From: Gartmann, Petra
Sent: Wednesday, 15 September 2021 6:04 PM
To: Reid, John
Cc: Rush, Peter; FOI
Subject: Re: s47F - 2021/159 - Reply to notice of intent to consider a vexatious declaration application [SEC=OFFICIAL]

Please send team

Sent from my iPhone

On 15 Sep 2021, at 4:26 pm, Reid, John s22 > wrote:

DUPLICATE