



PROJECT ARGUS

Argus was a many eyed giant in Greek mythology. He had unwearying strength and could simultaneously look in every direction. Sleep never fell upon him. He always kept a sure watch.

The FOI Coordinator
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: foi@pmc.gov.au

Dear sir/madam,

This letter is a request for the purposes of the FOI Act 1982.

I seek access to the Prime Minister's diary from 23 May 2022 to today's date. I seek access to the diary in a weekly view as per the Treasurer's diary on the Treasury's disclosure log (FOI Number 3177). See <https://treasury.gov.au/sites/default/files/2022-11/foi-3177.pdf>

In processing this request, I draw the decision maker's attention to a number of decisions of the Information Commissioner and AAT in relation to requests for access to diaries. Examples include:

- Dreyfus and Attorney-General (Commonwealth of Australia) (Freedom of information) [2015] AATA 995 (22 December 2015)
- The Australian and Prime Minister of Australia [2016] AICmr 84 (7 December 2016)
- Josh Taylor and Minister for Communications and the Arts (Freedom of information) [2017] AICmr 9 (25 January 2017)
- Rex Patrick and Minister for Resources and Northern Australia (Freedom of information) [2019] AICmr 13 (25 March 2019)
- Rex Patrick and Department of Defence (Freedom of information) [2019] AICmr 19 (15 May 2019)

Yours faithfully

s 47F



s 22(1)(a)(ii)

From: FOI
Sent: Friday, 13 January 2023 2:30 PM
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii) s 22(1)(a)(ii) FOI
Subject: FW: PMO IC review application confirmed - PM/22/012 [SEC=OFFICIAL]

OFFICIAL

Dear s 22(1)(a)(ii)

Please see below confirmation from the OAIC that the applicant s 47F has sought Information Commissioner review of the decision for PM/22/012 (PM's weekly diary for first 100 days).

Kind regards

s 22(1)

Adviser | FOI Section
Department of the Prime Minister and Cabinet
p. (02) 6271 5849
Ngunnawal Country | One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600
e. FOI@pmc.gov.au w. pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

From: OAIC - FOI DR <foidr@oaic.gov.au>
Sent: Friday, 13 January 2023 1:13 PM
To: FOI <FOI@pmc.gov.au>
Subject: RE: PMO IC review application - PM/22/012 [SEC=OFFICIAL]

Dear s 22(1)

Thank you for your email.

I confirm that an application for IC review has been received in relation to this decision (our reference: MR22/01914). The IC review is currently undergoing assessment. Once the assessment is complete, we will contact the parties to discuss the next steps.

Kind regards



s 22(1)(a)(ii)
Intake and Early Resolution Team
Freedom of Information Regulatory Group
Office of the Australian Information Commissioner
GPO Box 5288 Sydney NSW 2001 | oaic.gov.au
1300 363 992 | foidr@oaic.gov.au



From: FOI <FOI@pmc.gov.au>
Sent: Wednesday, 11 January 2023 1:41 PM
To: OAIC - FOI DR <foidr@oaic.gov.au>
Cc: FOI <FOI@pmc.gov.au>
Subject: PMO IC review application - PM/22/012 [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

OFFICIAL

PM&C reference: PM/22/012

Dear OAIC colleagues

We are seeking your advice as to whether an IC review application has been lodged in relation to an FOI decision made by a delegate of the Prime Minister late last year.

The applicant would be from the Australian Financial Review and the request relates to the Prime Minister's diary. A decision was notified to the applicant on 16 November 2022 and therefore the last day for seeking IC review has passed.

We are aware from media reports that the applicant has sought a review but have not yet received notification of this. Your confirmation would be most appreciated.

Please do not hesitate to contact me on the below details should you wish to discuss.

Many thanks,

S
22(1)

Adviser | FOI Section
Department of the Prime Minister and Cabinet
p. (02) 6271 5849
Ngunnawal Country | One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600
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The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

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Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

FOI Reference: PM/22/024

To s 47FEmail: foi+request-9640-a900fe81@righttoknow.org.auDear s 47F

Thank you for your email dated 1 December 2022 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms:

I request access to the Prime Minister's ministerial calendar for the period 1 October until today, formatted to either one day per page or one week to a page.

Authorised decision-maker

I am authorised to make a decision in this matter on the Prime Minister's behalf.

Notice of liability to pay a charge

The purpose of this notice is to advise that I consider you are liable to pay a charge under section 29 of the Act. This notice also provides information to assist you to respond.

Preliminary assessment of the charge

In making a preliminary assessment of the amount of the charge I have had regard to the estimated time to process your request and the corresponding rates specified in Schedule 1 of the *Freedom of Information (Charges) Regulations 2019*.

In order to provide a reasonable estimate of the charge, I have reviewed and analysed a sample period of the Prime Minister's diary against the requirements of the Act.

Based on this analysis, I estimate that it would take (on average, and being conservative):

- 2.5 minutes to consider the entries for each day against section 4 of the Act and the Information Commissioner guidelines to determine whether particular entries are "official documents of the Minister" and subject to disclosure under the Act.
- 30 seconds to consider the entries for each day and identify any third parties who will require consultation, prior to a decision on access being made

- 13 minutes to consider the entries for each day that are subject to disclosure under the Act against the exemption provisions, including review of the public record, consultation with relevant advisers (by exception, as needed) and considering the operation of the exemptions, as appropriate
- 2 minutes (not including administrative support) to prepare a redacted version of each day of the diary

For a 65 day period, this is a total of approximately 19.5 hours of work for the authorised decision-maker. In addition I anticipate there will be a need for third party consultation. Assuming consultation takes 20 minutes per consultation for an estimated 40 individuals, this would increase the time required to process the request by a total of 13 hours and 20 minutes.

Finally, having regard to the wide ranging nature of the Prime Minister's engagements and that a significant number of exemptions may potentially be engaged, I estimate it would take at least 10 hours to prepare reasons for decision.

I thus estimate that the decision-making time involved in the processing of your request will be 43 hours. Pursuant to the Regulations, the rate for decision-making is \$20 per hour after the first 5 hours (ie \$20 for 38 hours), for a total of \$760.

I have decided not to charge for the search and retrieval process. Having regard to the objects of the Act and public interest considerations, I have also decided to apply a 20% discount to the charge amount.

My preliminary assessment of the amount of the charge is thus \$608.

Your options

The Act requires you to exercise one of the following options in writing within 30 days of receipt of this notice (by 15 February 2023):

- (1) You can agree to pay the charge, and make a payment in full or pay only the deposit. Details on how to pay are below.
- (2) You may contend that the charge has been wrongly assessed, should be reduced or not imposed. You should provide reasons for your contention. In determining whether or not to reduce or not impose the charge, the Act requires the decision-maker to take into account whether payment of the charge would cause financial hardship, and whether the giving of access would be in the general public interest.
- (3) You can withdraw your request.

If you do not respond within 30 days of receiving this notice the Act provides the request is deemed to have been withdrawn.¹ If this occurs, the Office will take no further action.

How to pay a charge

You can choose to pay the full amount or a 25% deposit of \$152.

¹ Section 29(2) of the Act

You may pay by direct debit into the following account:

Account Name:	Department of the Prime Minister and Cabinet Official Departmental Account
BSB:	092-009
Account:	147252
Reference:	FOI-PM-22-024

Please advise the Department of the Prime Minister and Cabinet at foi@pmc.gov.au once you have made payment. The Department will send you a receipt upon payment confirmation.

Once you agree to pay the charge and a payment is received (or, if you contend the charge should be reduced or not imposed, once the amount of any charge you are liable to pay is determined and paid), the processing period will recommence and we will continue to deal with your application under the Act. In that event, you will be notified when a decision on access is made, and any documents will only be provided to you after any outstanding charge is paid.

Calculation of 30 day period

In accordance with section 31 of the Act the processing time for your request excludes the period from the day that we send this notice until the day payment is received, and will resume on either:

- the day after you pay the charge (or the deposit);
- if the amount of the charge is changed, the day after you pay the amended charge (or the deposit); or
- if a decision is made not to impose a charge, the day after you are notified of that decision.

Contact officer

Should you wish to discuss any aspect of your request, please contact ^{s 22(1)(a)}(ii) at the Department of the Prime Minister and Cabinet, you can contact her by email at foi@pmc.gov.au or by phone 02 6271 5849, quoting reference number PM-22-024.

Yours sincerely

^{s 22(1)(a)}(ii)

Senior Legal Adviser
16 January 2023

FOI Reference: PM/22/025

To s 47F
s 47F

Email: s 47F

Dear s 47F

Thank you for your email dated 5 December 2022 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms (extract):

...access to the Prime Minister's diary from 23 May 2022 to today's date...

Authorised decision-maker

I am authorised to make a decision in this matter on the Prime Minister's behalf.

Notice of liability to pay a charge

The purpose of this notice is to advise that I consider you are liable to pay a charge under section 29 of the Act. This notice also provides information to assist you to respond.

Preliminary assessment of the charge

In making a preliminary assessment of the amount of the charge I have had regard to the estimated time to process your request and the corresponding rates specified in Schedule 1 of the *Freedom of Information (Charges) Regulations 2019*.

In order to provide a reasonable estimate of the charge, I have reviewed and analysed a sample period of the Prime Minister's diary against the requirements of the Act.

Based on this analysis, I estimate that it would take (on average, and being conservative):

- 2.5 minutes to consider the entries for each day against section 4 of the Act and the Information Commissioner guidelines to determine whether particular entries are "official documents of the Minister" and subject to disclosure under the Act.
- 30 seconds to consider the entries for each day and identify any third parties who will require consultation, prior to a decision on access being made

- 13 minutes to consider the entries for each day that are subject to disclosure under the Act against the exemption provisions including; review of the public record, consultation with relevant advisers (by exception, as needed), and considering the operation of the exemptions, as appropriate
- 2 minutes (not including administrative support) to prepare a redacted version of each day of the diary

For a 197 day period, this is a total of approximately 59 hours of work for the authorised decision-maker. In addition I anticipate there will be a need for third party consultation. Assuming consultation takes 20 minutes per consultation for an estimated 60 individuals, this would increase the time required to process the request by a total of 20 hours.

Finally, having regard to the wide ranging nature of the Prime Minister's engagements and that a significant number of exemptions may potentially be engaged, I estimate it would take at least 10 hours to prepare reasons for decision.

I thus estimate that the decision-making time involved in the processing of your request will be 89 hours. Pursuant to the Regulations, the rate for decision-making is \$20 per hour after the first 5 hours (ie \$20 for 84 hours), for a total of \$1,680.

I have decided not to charge for the search and retrieval process. Having regard to the objects of the Act and public interest considerations, I have also decided to apply a 20% discount to the charge amount.

My preliminary assessment of the amount of the charge is thus \$1,344.

Your options

The Act requires you to exercise one of the following options in writing within 30 days of receipt of this notice (by 15 February 2023):

- (1) You can agree to pay the charge, and make a payment in full or pay only the deposit. Details on how to pay are below.
- (2) You may contend that the charge has been wrongly assessed, should be reduced or not imposed. You should provide reasons for your contention. In determining whether or not to reduce or not impose the charge, the Act requires the decision-maker to take into account whether payment of the charge would cause financial hardship, and whether the giving of access would be in the general public interest.
- (3) You can withdraw your request.

If you do not respond within 30 days of receiving this notice the Act provides the request is deemed to have been withdrawn.¹ If this occurs, the Office will take no further action.

How to pay a charge

You can choose to pay the full amount or a 25% deposit of \$336.

You may pay by bank transfer into the following account:

¹ Section 29(2) of the Act

Account Name:	Department of the Prime Minister and Cabinet Official Departmental Account
BSB:	092-009
Account:	147252
Reference:	FOI-PM-22-025

Please advise the Department of the Prime Minister and Cabinet at foi@pmc.gov.au once you have made payment. The Department will send you a receipt upon payment confirmation.

Once you agree to pay the charge and a payment is received, (or, if you contend the charge should be reduced or not imposed, once that amount of any charge you are liable to pay is determined and paid), the processing period will recommence and we will continue to deal with your application under the FOI Act. In that event, you will be notified when a decision on access is made, and any documents will only be provided to you after any outstanding charge is paid.

Calculation of 30 day period

In accordance with section 31 of the Act the processing time for your request excludes the period from the day that we send this notice until the day payment is received, and will resume on either:

- the day after you pay the charge (or the deposit);
- if the amount of the charge is changed, the day after you pay the amended charge (or the deposit); or
- if a decision is made not to impose a charge, the day after you are notified of that decision.

Contact officer

Should you wish to discuss any aspect of your request, please contact s 22(1)(a)(ii) at the Department of the Prime Minister and Cabinet, you can contact her by email at foi@pmc.gov.au or by phone 02 6271 5849, quoting reference number PM-22-025.

Yours sincerely

s 22(1)(a)(ii)

Senior Legal Adviser
16 January 2023

From: FOI
To: s 22(1)(a)(ii) s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii) Field, Autumn; FOI
Subject: FW: PM/2022/025 - FOI Request [SEC=OFFICIAL]
Date: Tuesday, 17 January 2023 9:12:53 AM
Attachments: [image001.png](#)
[image002.png](#)
[image006.png](#)

OFFICIAL

Reference: FOI PM/22/025

Dear s 22(1)(a)(ii)

s 47F has replied to the Charges Notice. He has made a payment so as to restart the processing of the request, he puts forward an interpretation that there is no suspension to the processing period, and put forward a contention that the charge has been wrongly assessed. His contention is set out in the below email.

Please consider and advise how you would like to proceed. The first part of the reply would be to address the processing period, and while the Act would have allowed for 30 days for you to consider the contention the decision due date would fall prior to this and also requires you to consider if you decide to a) impose the charge, and b) make any necessary adjustments to the charge if the processing of the request is less than the estimate.

Regards

s 22(1)(a)(ii)

l)(a)(ii) | Senior Adviser
FOI and Privacy Section | Legal Policy Branch
p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)

From: s 47F
Sent: Tuesday, 17 January 2023 8:01 AM
To: FOI <FOI@pmc.gov.au>
Subject: Re: PM/2022/025 - FOI Request [SEC=OFFICIAL]

Dear s 22(1)(a)(ii)

Thank you for the charges letter. I respond in two ways as is permitted under the FOI Act and articulated in plain language in the Information Commissioner's FOI guidelines at 4.10:

... An applicant may also object to the estimated charge and pay the deposit or full estimated charge to progress a decision on the FOI request while the charge is disputed.

Payment of Deposit

The payment of the deposit has been made.

s 47F



I note that s31 of the Act pauses the processing time of an FOI for the period I consider my options and advised the Department. Contrary to the contention in the letter that you sent, I did not receive the charges notice on the 15th January, rather at 7:29 PM ACST on the 16th January. I have paid the fee on the same evening and am advising the Office of the Prime Minister prior to the start of the next working day - as such, there is no s31 extension period.

Challenge of Charges Decision

Top Level Objection

As a top level 'pub test' ...

Having requested the diary "in a weekly view as per the Treasurer's diary on the Treasury's disclosure log (FOI Number 3177) - See <https://treasury.gov.au/sites/default/files/2022-11/foi-3177.pdf>". I have requested document of (197 days/7 days per page) of 29 pages. I am not seeking any invitations, correspondence, or background or briefing documents. **The Prime Minister's office is seeking to charge \$1,344 for processing 29 pages.** Having made more almost [300 FOIs over the past 5 years](#), many of which I have received and paid charges for, I can inform you that this estimate of charges is the most outrageous I have ever encountered.

s 47F



More Detailed Objection

Justice Jagot, in *Dreyfus and Attorney-General (Commonwealth of Australia) (Freedom of information) [2015] AATA 995 (22 December 2015)* – referenced in my initial request – gave guidance as to how a week view diary access request under FOI should be approached. As a starting point His Honour said:

[15] *Because the process of reasoning involves a hypothetical situation the Minister's or agency's assessment will necessarily be based on estimates about which, I accept, reasonable minds might differ. It is fundamental, however, that the process of estimation reflects the requirements of the FOI Act. If, for example, the resources that would have to be used are estimated on the basis of requirements for consultation when the FOI Act does not require consultation, then the capacity to decide if a practical refusal reason exists would be able to be used to defeat the objects of the FOI Act, including not only the right of access granted by the Act but also the express intention of the Parliament that functions and powers given by the Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost. The same thwarting of the statutory objects and the intention of Parliament would result if, for example, the estimate was based on an expectation that examining the documents would require a detailed and time-consuming exercise of going behind the face of the*

documents to try to ascertain if any exemption might apply when, on any reasonable view, no exemption could be engaged.

I extract a single page from the recent release of a Treasurer's diary for illustrative purposes.

Wednesday, 10 August

s 33(a)(i)
BRISBANE/ROCKHAMPTON/BRISBANE/MAROOCHYDORE [SEC=OFFICIAL] - Jim Chalmers Public
REGIONAL VISIT QLD (with Senator the Hon Anthony Chisholm) [SEC=OFFICIAL] - Jim Chalmers Public
s 22
6:05am - 6:05 AM: Depart Brisbane - s 37(1)(c) (arriving Rockhampton @ 7.20 am) [Jim
7:20am - 7:20 AM: Arrive Rockhampton s 37(1)(c) [SEC=OFFICIAL] - Jim Chalmers
7:20am - 7:20 AM: Pick up self-drive car (organised by Senator Chisholm's office)
8:00am - 8:30am 7:30 AM: Coffee with Cr Tony Williams (Mayor, Rockhampton
8:15am - 8:45am 8:15 AM: Visit to CQ University Advanced Technology and
9:00am - 10:30am 9:00 AM: Participate in Central Queensland Jobs and Skills Forum
10:45am - 11:00am 10:45 AM: Media Preparation s 22 [SEC=OFFICIAL] - Jim Chalmers
11:00am - 11:30am 11:00 AM: Joint Press Conference with Senator Chisholm s 22
s 22
11:55am - 11:55 AM: Drop off hire car [SEC=OFFICIAL] (AVIS Rockhampton Airport) -
12:55pm - 12:55 PM: Depart Rockhampton - s 37(1)(c) (arriving Brisbane @ 2.05 pm)
2:05pm - 2:05 PM: Arrive Brisbane s 37(1)(c) [SEC=OFFICIAL] - Jim Chalmers Public
2:15pm - 2:15 PM: Depart Brisbane Airport for the Sunshine Coast (arriving @ 3.45
4:00pm - 4:00 PM: Check into accommodation [SEC=OFFICIAL] s 37(1)(c)
s 22

According to s 22(1)(a) calculations it will take 18 minutes to deal with this in circumstances where Justice Jagot determined:

- [Para 34 - 37] Because the diary request only deals with past movements, and many of those movements will be in general terms and common knowledge (e.g. Parliament House), properly based s37(1)(c) security risk exemptions are unlikely to apply. Decisions on security will not likely require consultation with bodies such as the Australian Federal Police, State and Territory police or intelligence agencies. It is a decision [the FOI decision maker] is readily able to make.
- [38] The fact that the Prime Minister had a past meeting with ASIO or attended a meeting of the National Security Council/Committee, where the diary says nothing more than "meeting with ASIO" or "meeting of National Security Council/Committee" could not cause damage to security or defence of Australia.
- [40] It cannot be accepted that, just because a business or individual might be named in the diary, it is not necessary to go behind the entry and examine associated documents and undertake a complex process of working out whether, by the disclosure of some pattern or mosaic, the disclosure of the information might unreasonably disclose personal or business information of the relevant kind such as to require consultation with the person concerned.

- [41] It is extremely likely that knowledge of a past meeting with a minister would, or could reasonably be expected to, unreasonably affect such a person adversely in respect of his or her lawful business or professional affairs or could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency (etc), which are the pre-conditions to exemption under s 47G(1).
- [43 to 51] Before consulting with a third party the decision maker there must be some rational basis which the agency or Minister can discern indicating that disclosure of the document would, or could be expected to, unreasonably affect such a person adversely in respect of his or her lawful business or professional affairs. Where there is nothing more than an entry in the diary of a name or names of a business representative (and the business name) who might have met with the minister in the past it is not possible to discern a rational basis upon which it could appear in every such case that the person(s) concerned might reasonably wish to make an exemption contention.
- [52] It would be wrong to approach the required [FOI] task on the basis that: (i) some people might be sensitive to or concerned about the fact that they have met a Minister in the Minister's official capacity or that such people might prefer, even strongly prefer, that the fact of their meeting not be disclosed; or (ii) the decision-maker is subject to some obligation to search for material not known or otherwise apparent from the face of the document to which access is sought to try to find some basis for it to appear that a person might reasonably wish to make an exemption contention. There is no foundation in the FOI Act to perform the functions which it requires with a view to such sensitivities.
- [53] Entries in the diary that merely describe who the Minister was to met, not the content of the meeting, are essentially historical entries.
- [54] A diary entry that says "Cabinet meeting" does not attract the operation of s34.
- [60] And entry "Meeting with a [specific] minister cannot reasonably give rise to an exemption.
- Entries of a personal nature, or of a non-public meetings such as a political party function will be readily seen and s22 easily applied.

Justice Jagot was of the view that one minute per entry, where consultation was not required, was generous. Respectfully, ^{s 22(1)(a)}_(iii) guilds the lily.

The FOI Act (and authorities) supports the release of minister's diaries. It will not surprise you that many are of the view that that Minister's diaries should be made public as a matter of course. The release of ministers' diaries, and particularly the diary of the Prime Minister, is both of public interest and in the public interest. It promotes transparency and builds confidence in our political leaders. It is noted that the results of this FOI will be made available for all to see on a disclosure log. Putting aside the unreasonable estimate, it is not in the public interest to fetter access (for every Australian) to the Prime Minister's diary. Indeed, attempting to put off such an application by charging an excessive cost, promotes the idea that the Prime Minister is disingenuous with his claims about his Government being transparent.

The estimate should be reconsidered. ^{s 47F}

^{s 47F}

§ 47F

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

Date: Monday, 16 January 2023 at 7:29 pm

To: § 47F

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

Subject: PM/2022/025 - FOI Request [SEC=OFFICIAL]

OFFICIAL

Reference: PM/22/025

Dear § 47F

Please find attached a letter from the Office of the Prime Minister concerning your request made under the *Freedom of Information Act 1982*.

Your sincerely

§ 22(1)(a)(ii)

Adviser | FOI Section

Department of the Prime Minister and Cabinet

p. (02) 6271 5849

Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

e. FOI@pmc.gov.au w. pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

FOI Reference: PM/22/025

s 47F

Thank you for your email dated 5 December 2022 regarding a request to access documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms:

...access to the Prime Minister's diary from 23 May 2022 to today's date. I seek access to the dairy in a weekly view...

Authorised decision-maker

I am authorised to make a decision in this matter on the Prime Minister's behalf.

Liability to pay a charge

On 16 January 2023, I wrote to notify you of the liability to pay a charge in respect of this request under section 29 of the Act. On 17 January 2023 you contended that the charge had been wrongly assessed or should be reduced or not imposed. You also paid the deposit calculated for the preliminary assessment of the charge. I will therefore continue to process your request in accordance with Act.

As explained below, I consider that a practical refusal reason exists in relation to your request, and I invite you to consult on the terms of the request. Following the outcome of the request consultation process, I will further consider your liability to pay a charge, including your objections.

Notice of practical refusal reason

Section 24(1) of the Act provides that a request may be refused if the decision maker is satisfied that a practical refusal reason exists in relation to that request.

I write to advise you that, subject to possible further revision which would narrow the request, I consider the work involved in processing the request in its current form would substantially and unreasonably interfere with the performance of the Minister's functions.

This is due to the complexity and volume of information contained within the documents responsive to your request, and that the diary used by the Prime Minister contains multiple types of entries, not all of which are subject to the Act.

This constitutes a 'practical refusal reason' under section 24AA of the Act and on this basis I intend to refuse access to the documents you have requested.

Before a final decision to refuse the request can be made you have an opportunity to revise your request. This is called a 'request consultation process' as set out in section 24AB of the Act. You have 14 days to respond to this notice, as set out below.

Reasons for intention to refuse your request

In considering if a practical refusal reason exists I have had regard to the activities specified in section 24AA(2) of the Act, the resources required of the Minister to perform those activities, and if the processing of your request would interfere with the performance of the functions of the Prime Minister and his Office.

The Prime Minister and his Office undertake a wide-variety of functions and activities. The Prime Minister is the leader of the executive branch of the federal government. The Prime Minister leads the members of the government to develop, debate and implement the government's policy agenda. The Prime Minister chairs the Federal Cabinet and leads engagement with the States and Territories including as chair of the National Cabinet. The Prime Minister allocates responsibilities to, and expectations of the Ministry and provides advice to the Governor-General on the appointment of Ministers of State and changes to the machinery of government. The Prime Minister is the chief government spokesperson domestically and represents Australia at a range of international forums. The Prime Minister is supported by staff employed under the *Members of Parliament (Staff) Act 1984* that provide advice and executive support.

The Office acknowledges the processing of requests for access to documents is a legitimate part of the Minister's functions, however in this case, the estimated time to process your request is significant. Further, given the potentially broad range of third parties, subject matters and policy issues involved, it is unclear how many ministerial advisers will need to be engaged and consulted. The Office is not able to reasonably divert its staff from their day to day functions to process such a broad and complex request.

Estimate of time to process request

In order to provide a reasonable estimate of the time it would take to process your request, I conducted a review and analysis of a sample period of the Prime Minister's diary against the requirements of the FOI Act. Based on that analysis, I find that the assessment of the documents will be a complex, time-consuming task and require the following processing stages.

Firstly, the authorised decision maker will need to consider the right of access as set out in the Act, read in light of the relevant Information Commissioner guidelines. The reason for

this is that some of the entries in the diary are not ‘an official document of a Minister’ as set out in section 4 of the Act, being (with emphasis):

a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency...

Examples of entries that would not be subject to the Act include: personal matters, matters pertaining to staff within the office, matters relating to the Prime Minister’s activities in his capacity as a local member and matters of a party political nature. For many entries, it may be possible to determine whether they fall within the purview of the Act from the description of the entry on its face. However, for some it may be necessary to undertake further inquiries (including with other senior advisers in the Office) to ascertain the purpose of the meeting and determine whether or not the entry falls within the meaning of ‘official document of the Minister’.

Second, it will be necessary to identify third parties referred to in particular entries and to consider whether the consultation provisions in the Act may be applicable. Based on a review of a sample two week period, I identified at least eight individuals (being a subset of the third parties mentioned) who may potentially require consultation, as they may reasonably wish to contend that an exemption applies to the disclosure of their information.

I note that in making a decision to enter into a consultation under the Act, the decision-maker will have regard to the discussion of Jagot J at [15] and [45]-[47] of [Dreyfus and Attorney-General \[2015\] AATA 995](#) and consult only with those third parties that may reasonably wish to make a contention based on the face of the entry or information known to the decision-maker.

Thirdly, after any consultation process is complete, it will be necessary to undertake an assessment of each remaining diary entry against the exemption provisions in the Act. This will involve comparison of some entries with the public record to determine whether information that might otherwise be confidential and exempt is now disclosable. Further, in light of the wide ranging nature of the Prime Minister’s engagements and activities, I expect that a significant number of exemptions may potentially be engaged and will need to be considered.

Finally, a modified copy of the diary will need to be prepared with the exempt entries redacted and marked appropriately. It will also be necessary to prepare a notice of decision setting out reasons.

With this in mind and, based on my review and analysis of a sample period of the diary, I estimate that it would take (on average, and being conservative):

- 2.5 minutes to consider the entries for each day against section 4 of the Act and the Information Commissioner guidelines, including consultation with relevant advisers, as needed, to determine whether the particular entries are “official documents of the Minister” and subject to disclosure under the Act
- 30 seconds to consider the entries for each day and identify whether consultation is required
- 13 minutes to consider the entries for each day against the exemption provisions, including review of the public record, consultation with relevant advisers (by exception, as needed) and obtaining and considering advice on the operation of the exemptions, as appropriate.

The authorised decision-maker would rely on administrative support to prepare a modified copy of the diary for access, however they would need to carefully direct and oversee this process. I estimate it would take about 2 minutes (not including administrative support) to prepare a redacted version of each day of the diary.

For a 197 day period, this is a total of approximately 59 hours of work for the authorised decision-maker.

It is difficult to estimate the time it would take to undertake third party consultations. A conservative estimate is 20 minutes per consultation for 60 individuals for a total of 20 hours (although I would expect this could be considerably higher, noting the requirement to issue reasons to the third party if a decision is made to grant access despite their contention to the contrary). I have capped the number of estimated consultations, having regard to the guidance from Jagot J in [*Dreyfus and Attorney-General* \[2015\] AATA 995](#).

Finally, having regard to the wide ranging nature of the Prime Minister's engagements and that a significant number of exemptions are potentially engaged, I estimate it will take at least 10 hours to prepare the reasons for decision.

I thus estimate that the processing of your request will take **89 hours** to complete by the authorised decision-maker. This does not include the time of senior advisers in the Office who may need to be consulted for particular entries; nor the time of administrative support staff to assist with the process.

For the reasons given above, I thus find that processing your request in its current form would unreasonably divert Office resources from its other operations and create a substantial and unreasonable interference with the performance of the Minister's functions.

Request consultation process

You now have an opportunity to revise your request. Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the specific documents you wish to access. For example, you may wish to consider revising your request by reducing the timeframe.

You may wish to review the information made public by the Prime Minister on his media page during the relevant time period to identify a specific timeframe that is of interest to you. See: [Media Centre | Prime Minister of Australia \(pm.gov.au\)](https://www.pm.gov.au/media-centre)

Section 24AB of the Act provides that before the end of the consultation period you must do one of the following, in writing, within the next 14 days (by 1 February 2023):

- revise your FOI request;
- indicate that you do not wish to revise it; or
- withdraw the FOI request.

The consultation period runs for 14 days and starts on the day after you receive this notice. During this time, you may wish to seek assistance to revise your request from the contact person listed below.

If you do not do one of the above during the consultation period, your request will be taken to have been withdrawn. In that event, your deposit would be refunded.

No guarantee of access

Please be aware that even if you revise your FOI request there is no guarantee that documents will ultimately be released. The issue we are addressing is whether your current FOI request can be processed.

Calculation of 30 day period

Please note that the time taken to consult with you regarding the scope of your FOI request, under this request consultation notice is not taken into account for the purposes of calculating the 30 day period.

Contact officer

Should you wish to discuss any aspect of your request, please contact s 22(1)(a)(ii) at the Department of the Prime Minister and Cabinet, you can contact her by email at foi@pmc.gov.au or by phone 02 6271 5849, quoting reference number PM-22-025.

Yours sincerely

s 22(1)(a)(ii)

Senior Legal Adviser
18 January 2023

From: [FOI](#)
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii) s 22(1)(a)(ii) [Field, Autumn](#); [FOI](#); s 22(1)(a)(ii)
Subject: FW: PM/22/025 - FOI Request [SEC=OFFICIAL]
Date: Thursday, 19 January 2023 9:17:43 AM
Attachments: [image004.png](#)

OFFICIAL

Dear s 22(1)(a)(ii)

s 47F has replied to the notice and confirmed he does not wish to limit the scope. This reply has restarted the processing of the request.

Please consider s 47F email below and advise how you would like to proceed.

Regards

s 22(1)(a)(iii)

s 22(1)(a)(ii) | Senior Adviser
FOI and Privacy Section | Legal Policy Branch
p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)

From: s 47F
Sent: Thursday, 19 January 2023 9:02 AM
To: FOI <FOI@pmc.gov.au>
Subject: Re: PM/22/025 - FOI Request [SEC=OFFICIAL]

Good morning s 22(1)(a)(ii)

The attached letter to *your* email is very unusual and confusing in that, after the PMO has decided to impose a charge (a reviewable decision) to proceed with the request, and the deposit has been paid by the applicant, it makes a second reviewable decision contrary to the intent of charges decision (and inconsistent with the [process](#) published by the OAIC).

On the basis of the charges decision (which I will utilise in any submissions to the Information Commissioner), the authorities, and the fact that I'm only after what amounts to 29 pages, I do not intend to limit the scope. The PMO should perhaps reconsider its position, but otherwise affirms its s24 decision such that it can be subject to independent challenge.

Kind regards - s 47F

s 47F



From: FOI <FOI@pmc.gov.au>
Date: Wednesday, 18 January 2023 at 5:41 pm
To: s 47F
Cc: FOI <FOI@pmc.gov.au>
Subject: PM/22/025 - FOI Request [SEC=OFFICIAL]

OFFICIAL

Reference: PM/22/025

Dear s 47F

Please find attached a letter from the Office of the Prime Minister concerning your request made under the *Freedom of Information Act 1982*.

Your sincerely

s 22(1)(a)(ii)

| Senior Adviser
FOI and Privacy Section | Legal Policy Branch
Department of the Prime Minister and Cabinet
p. s 22(1)(a)(ii)

Nggunawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600
e. FOI@pmc.gov.au w. pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

From: FOI
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii) s 22(1)(a)(ii) Field, Autumn; FOI; s 22(1)(a)(ii)
Subject: FW: PM/22/024 - FOI Request [SEC=OFFICIAL]
Date: Thursday, 19 January 2023 8:08:59 AM

OFFICIAL

Dear s 22(1)(a)(ii)

s 47F has replied to the Charges Notice. A contention has been made to reduce/waive the charge. The contention is set out in the below email.

The Act requires the decision-maker to consider the contention, the matters set out in the Act (i.e. financial hardship and PI), and provide a decision no later than 30 days from the date the contention was received. Therefore a decision on the charge is due on or before 20 February 2023.

Please consider and advise how you would like to proceed.

Kind Regards

s 22(1)(a)(ii)

s 22(1)(a)(ii) | Senior Adviser
FOI and Privacy Section | Legal Policy Branch
p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)

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

From: s 47F <foi+request-9640-a900fe81@righttoknow.org.au>
Sent: Wednesday, 18 January 2023 6:53 PM
To: FOI <FOI@pmc.gov.au>
Subject: Re: PM/22/024 - FOI Request [SEC=OFFICIAL]

Dear FOI,

Att: s 22(1)(a)(ii)

I confirm receipt of your letter outlining the proposed charge for processing my FOI.

At the outset, I wish to note my concern that the Prime Minister has made a preliminary decision to impose such an exorbitant fee in clear contravention of the objects of the FOI Act and the Prime Minister's previous public statements about the importance of transparency.

There is a clear and well-established public interest in the disclosure of ministerial diaries,

particularly for senior Ministers such as the Prime Minister. The nature of this public interest – which is evident from the number of similar requests that the Prime Minister is reported to have received – establishes a strong case for the release of these documents with no charge.

In accordance with the relevant Guidelines, I seek a full waiver of the fees (ie a reduction to \$0) noting the significant public interest in the documents. In support of this request, I note:

- There is clear legal precedent which establishes that there is a significant public interest in the disclosure of ministerial diaries. This is relevant in considering whether the charge should be waived (in this instance reduced to \$0). Further evidence of the public interest can be found in the fact that there have been multiple requests made for these, or similar documents.
- The charge proposed is inflated and does not meet the requirement that the charge fairly reflect the work involved in providing access to the requested documents. By way of example, in your letter you referenced the need to consult with third parties and the large number of potential exemptions that may apply. It is now well established that an expectation to consult does not arise merely because a person's name or details are included in a meeting. In addition, there is clear guidance about the type of information within a diary that is required to be released and the type of information that is exempt. I note that the FOI Guidelines provide that "an underlying assumption in calculating decision making time is that the officers involved in this process are skilled and efficient. For example, it is assumed that an officer who is deciding whether an exemption applies has appropriate knowledge of the FOI Act and the scope of the exemption provisions." In light of this, the timeframe estimated for decision making in your letter is not credible.
- It appears that the Prime Minister is imposing charges for the purposes of discouraging applicants such as myself from exercising the right of access provided by the FOI. In addition, the timeframe in which this information was communicated (being late on the day that the decision was due) in circumstances where an extension had voluntarily been provided to the Prime Minister by myself suggests that the Prime Minister was also using the imposition of a charge as a delay tactic.
- The request has been made through the right to know website – this ensures that the information is made publicly available to the world at large as soon as it is released to myself as the applicant.
- There is significant precedent for the release of Ministerial diaries with no charges being imposed – as is appropriate given the significant public interest in the documents.

In addition to the above, it has been publicly reported (refer link to article below) that the Prime Minister has also sought to impose a \$1344 charge to another candidate in relation to a similar FOI request that would encompass the documents I have requested. In relation to this decision and my request, it seems that the Prime Minister has, in effect, sought to 'double dip' and charge multiple applicants for the same work. This is on top of a decision that the Prime

Minister is reported to have made in 2022 to refuse access to his diary for his first 100 days as PM on the basis of an unreasonable diversion of resources – a decision which is clearly inconsistent with the FOI Act and the precedent established in Attorney-General v Dreyfus [2016] FCAFC 119. These decisions add further weight to the concern identified above that the charge has been imposed in relation to my request for the improper purpose of discouraging applicants such as myself from requesting access to documents from the Prime Minister's office under the FOI Act.

Public Reporting of other case:

<https://www.afr.com/politics/federal/anthony-albanese-s-diary-pm-demands-1344-to-see-who-he-s-met-20230117-p5cd6a>

I look forward to hearing from you. I note that you are required to make a decision as soon as possible and look forward to hearing from you shortly.

Yours sincerely,

s 47F

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

OFFICIAL

Reference: PM/22/024

Dear

s 47F

Please find attached a letter from the Office of the Prime Minister
concerning your request made under the Freedom of Information Act 1982.

Your sincerely

§ 22(1)(a)(ii)

Adviser | FOI Section[]

Department of the Prime Minister and Cabinet

p. (02) 6271 5849

Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box

6500 CANBERRA ACT 2600

e. [1][email address] w. [2]pmc.gov.au

[3]cid:image001.jpg@01D78E24.FF2DAFB0[4]cid:image002.jpg@01D78E24.FF2DAFB0

[5]cid:image003.jpg@01D78E24.FF2DAFB0 The

Department

acknowledges

and pays

respect to

the past,

present and

emerging

Elders and

Traditional

Custodians

of Country,

and the

continuation

of cultural,

spiritual

and

educational

practices of

Aboriginal

and Torres

Strait

Islander

peoples.

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References

Visible links

1. [mailto:\[email address\]](mailto:[email address])
2. <https://www.pmc.gov.au/>

3. https://twitter.com/pmc_gov_au

4. <https://www.linkedin.com/company/department-of-the-prime-minister-and-cabinet>

Please use this email address for all replies to this request:

foi+request-9640-a900fe81@righttoknow.org.au

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:

<https://www.righttoknow.org.au/help/officers>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

FOI Reference: PM/22/25

s 47F

I write with respect to your email dated 5 December 2022 requesting access to documents under the *Freedom of Information Act 1982* (the Act).

Terms of FOI request

You set out your FOI request in the following terms:

...access to the Prime Minister's diary from 23 May 2022 to today's date. I seek access to the diary in a weekly view...

Request Consultation

On 18 January 2023 I entered into a 'request consultation process' with you under the Act.

On 19 January 2023 you replied to confirm that you do not intend to limit the scope of your request.

Authorised decision-maker

I am authorised to make a decision in this matter on the Prime Minister's behalf.

Material taken into account

In reaching my decision I had regard to:

- the terms of your request
- the FOI Act
- the Guidelines issued by the Information Commissioner, under section 93A of the Act (Guidelines)

Documents in scope

The Office has identified the following documents that fall within the terms of your request:

- The Prime Minister's diary in an electronic format for the period from 23 May 2022 until 5 December 2022.

Decision

I have decided to refuse access under section 24 of the Act.

My findings of fact and reasons for decision are set out below.

Reasons for decision

Power to refuse request – diversion of resources

Section 24(1) of the Act provides that a request may be refused if the decision maker is satisfied that a practical refusal reason exists in relation to that request and the minister has undertaken a 'request consultation process'.

I am satisfied I have provided notice in accordance with section 24AB(2) of the Act and that a 'request consultation process' was undertaken. I acknowledge that you have complied with section 24AB(6)(c) of the Act by indicating that you do not wish to revise the request.

With this in mind and, based on my sample assessment for the estimated processing time, as set out in my notice to you dated 18 January 2023, I am satisfied that the practical refusal reason still exists.

In summary, and as explained in my earlier notice to you, this is due to the complexity and volume of information contained within the documents responsive to your request, and that the diary used by the Prime Minister contains multiple types of entries, not all of which are subject to the Act.

The Office acknowledges the processing of requests for access to documents is a legitimate part of the minister's functions, however in this case, the estimated time to process your request is significant. Further, given the potentially broad range of third parties, subject matters and policy issues involved, it is unclear how many ministerial advisers will need to be engaged and consulted. The Office is not able to reasonably divert its staff from their day to day functions to process such a broad and complex request.

Accordingly, I remain satisfied the work involved in processing your request would unreasonably divert Office resources from its other operations and create a substantial and unreasonable interference with the performance of the Prime Minister's functions.

Refund of deposit

On 16 January 2023, you were given notice of a liability to pay a charge in respect of the request under section 29 of the Act. You responded to the notice and paid a deposit in the amount of \$336.00.

Having formed the view a practical refusal reason exists, I confirm that no charge will be imposed in relation to your request. I have asked the Department of the Prime Minister and Cabinet to contact you separately to arrange a refund of your deposit.


Review rights

If you disagree with the decision you may apply for an Information Commissioner review within 60 days from the date of this letter. The FOI Act does not provide for internal review of a decision by a Minister.

More information about review rights and how to apply is available at:
www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review

Yours sincerely

s 22(1)(a)(ii)

A large grey rectangular box redacting the signature of the Senior Legal Adviser.

Senior Legal Adviser
19 January 2023

19 January 2023

The FOI Coordinator
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: foi@pmc.gov.au

Dear sir/madam,

This letter is a request to the Prime Minister's Office for the purposes of the FOI Act 1982.

I seek access to the Prime Minister's diary from Monday 4 July 2022 to Sunday 17 July 2022. I only seek access to the diary in a weekly view.

Yours faithfully

s 47F

s 22(1)(a)(ii)

From: FOI
Sent: Thursday, 19 January 2023 2:04 PM
To: s 22(1)(a)(ii) s 22(1)(a)(ii)
Cc: FOI; s 22(1)(a)(ii) Field, Autumn; s 22(1)(a)(ii)
Subject: FW: FOI Request to Prime Minister's Office [SEC=OFFICIAL]

OFFICIAL

Dear s 22(1)(a)(ii)

The Department has received a new FOI request addressed to the Prime Minister, see below. The Department will acknowledge the request on behalf of the Office.

Timeframes

A decision on access is due to the applicant 30 days from receipt, unless an extension applies or is agreed to, this request is currently due by 18 February 2023.

If you require any assistance with processing the request please let us know. Following the outcome of your searches we can assist with document preparation or drafting a decision.

Kind Regards

s 22(1)(a)(ii)

s 22(1)(a)(ii) | Senior Adviser

FOI and Privacy Section | Legal Policy Branch

p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)

From: s 47F
Sent: Thursday, 19 January 2023 1:45 PM
To: FOI <FOI@pmc.gov.au>
Subject: FOI Request to Prime Minister's Office

Dear Prime Minister's Office,

This email is a request for the purposes of the FOI Act 1982.

I am seeking access to the Prime Minister's diary from Monday 20 June 2022 to Sunday 03 July 2022. I only seek access to the diary in a weekly view (only two pages).

The diary pages can be sent to this email address. If you have any questions, please don't hesitate to contact me by email.

Many Thanks § 47F

s 22(1)(a)(ii)

From: FOI
Sent: Thursday, 19 January 2023 2:29 PM
To: s 22(1)(a)(ii) s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii) Field, Autumn; FOI; s 22(1)(a)(ii)
Subject: FW: Requesting access to Prime Minister's diary s 47F [SEC=OFFICIAL]

Categories: Saved to Sharehub

OFFICIAL

Dear s 22(1)(a)(ii)

The Department has received a new FOI request addressed to the Prime Minister, see below. The Department will acknowledge the request on behalf of the Office.

Timeframes

A decision on access is due to the applicant 30 days from receipt, unless an extension applies or is agreed to, this request is currently due by 18 February 2023.

If you require any assistance with processing the request please let us know. Following the outcome of your searches we can assist with document preparation or drafting a decision.

Kind Regards

s 22(1)(a)(ii)

s 22(1)(a)(ii) | Senior Adviser

FOI and Privacy Section | Legal Policy Branch

p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)

From: s 47F

Sent: Thursday, 19 January 2023 2:14 PM

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

Subject: Requesting access to Prime Minister's diary - s 47F

Dear PMO,

This email is a request to the Prime Minister's Office for the purposes of the FOI Act 1982.

I am seeking access to the Prime Minister's diary from Monday 15 August 2022 to Sunday 28 August 2022. I am satisfied to only receive a weekly view.

The diary pages can be sent to this email address. If you have any questions, please don't hesitate to contact me by email.

Yours faithfully s 47F

s 47F