Dear Commissioner Falk,

I write regarding your discussion paper on the disclosure of public servants' names and contact details in response to Freedom of Information request. Thank you for the opportunity to comment on this issue. **I urge you to act with utmost caution in making any recommendations to the effect that junior public servants' identities and contact details should be released in public documents, as a default position.**

As is evident from my comments below, I am a current public servant, employed in a highly controversial regulatory area. For much the same reasons that I believe junior public servants in sensitive areas should have protections against injudicious release of their names and contact details, I would like my submission to be kept anonymous, please. I am happy for non-identifying elements to be published.

I noted the discussion paper began with consideration of Freedom of Information Memorandum no. 94, and the remarks that Parliament did not intend to provide public officials anonymity, and that there is no personal privacy interest in the information that a public official is conducting their normal duties.

Working in a regulatory area, I concur with the necessity of grounding all decisions in the text of the legislation, and interpreting that legislation in accordance with any clear signals of intent provided by Parliament. However, in this case, I believe it is equally important to have regard to fundamental changes to the nature of privacy, and threats to privacy, over the two decades since that memorandum was issued.

At the time the *Freedom of Information Act* was enacted, rapid distribution of released documents required resources possessed mainly only by large organisations with an appreciation of their responsibility not to facilitate dangers to individuals. In this so very thoroughly digitised era, any released document can immediately be globally distributed. There can no longer be assumptions regarding responsible use of information. It must be assumed that if a person exists who will misuse information, that person will find a way to access that information.

The greater accessibility of information is not an inherent problem – transparency is a key object of the Act. I am not therefore proposing that the digital age should automatically mean every public servant requires total anonymity. Instead, I would suggest that it has expanded the number of staff who may have plausible grounds to consider they are at risk to their privacy, or potentially safety, if their names are released. Exemptions from releasing names in such situations already exist, and the list of decisions appended to the discussion paper includes explicit recognition of threats arising from release of staff names. My request is therefore that, in making your recommendations to agencies following this consultation, you not downplay what I would consider to be greatly expanded risks in a digital era, and that you not urge agencies to assume that threats arising from publicly identifying public servants are either rare or minor.

This issue is particularly live for me, and the staff I work with, because my Department receives death threats that police advise us we should consider plausible. They are not an every day matter, but typically occur a couple of times a year. Currently, those threats are framed as general threats against departmental staff as a group – things along the lines of 'if your staff [redacted] they are likely to be shot'. We do not take these threats lightly, [redacted] We are greatly comforted that the names of our staff are not readily available, so that threats continue to be made to the Department, rather than to individuals. While that anonymity may not alter the physical risks staff face in key areas, it provides staff mental distance. They do not return home from work, dwelling on threats against them personally.

I am not expecting the above issue to apply to public servants in most areas of most departments. It is, however, illustrative of the need not to downplay potential risks.

As well as physical risks (which are certainly at the more extreme end of potential consequences), there are demonstrable reputational risks for public servants involved in controversial projects. While Australia is not yet seeing the particular intensity of blame on individual public servants for their roles in institutional decision-making that is evident in the United States, similar trends have begun to emerge. The names of scientists engaged in reviewing management plans for the Carmichael Coal Mine (Adani) were released to *The Australian*, and a sequence of articles followed that did considerable damage to those scientists' reputations – before any recommendations had been made. The 'First Dog on the Moon' cartoon series has held successive Threatened Species Commissioners personally responsible for what that cartoonist sees as environmental policy failures. Highly respected academics at the Centre for Aboriginal Economic Policy Research at the ANU were subject to vicious personal attacks by various politicians following their review of the implementation of the cashless welfare card in Indigenous communities. It would not be difficult for passionate individuals on any number of policy issues to release the names of public servants involved in controversial decisions and encourage like-minded people to hold those public servants personally responsible for those decisions.

As a final note on potential risks to staff, I note that many public service departments are developing or have in place domestic violence policies. A key element in all versions of those policies I have so far seen is an acknowledgement that a recognised threat to the safety and the quality of life of staff who have escaped harmful relationships is the ability of perpetrators to track down their former victims via publicly available information. In making decisions on Freedom of Information appeals, I would ask that you, as Commissioner, give consideration to options for agencies to advise that particular staff have heightened needs for their identities to be protected. I would further ask that in doing so, you allow staff to keep confidential the reasons for which they consider they have a heightened need for anonymity. Staff are likely to have felt considerable apprehension about advising their supervisors of any histories of domestic violence (or similar situations). They do not need to undergo those anxieties again to advise strangers of their personal histories.

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Clearly, as the Act acknowledges, a balance must be struck between the need to protect staff and the public interest in enabling appropriate scrutiny of potential conflicts of interest and/or bias in decision-making. Total anonymity for all people involved in controversial decisions would be unworkable and unwelcome.

The balance many public servants consider intuitively appropriate is for SES officers to be named, but for junior staff to be kept anonymous. As the discussion paper notes, it appears many departments are taking a similar approach. The discussion paper also states that Information Commissioners have previously considered there was no basis to distinguish between SES and other officers. I respectfully disagree, and ask that you reconsider whether that prior position is appropriate.

There is at least one very clear distinction between SES officers and junior staff: SES are decision-makers. It is right and proper that members of the public affected by decisions be advised who made those decisions. It is an essential transparency tool to enable the public to consider whether they wish to allege bias by the decision-maker, or any other conflict of interest. The demonstrable public good is clear.

Far less clear is the benefit to the public good from identifying junior staff involved in preparing briefs, or writing recommendations. These staff are not providing personal opinions, but rather are following analysis structures set out in departmental policy, and frequently are acting under direction. What is important is that there be transparency regarding what the recommendations were, and regarding the evidence used to support those recommendations. That transparency is provided by the briefing materials, not by the identities of staff. Where evidence has been improperly considered, improperly omitted, or unacceptably distorted, that too will be shown in the briefing materials without need for reference to the identities of the staff preparing the briefings.

Since the distinction I proposed between SES and junior staff is the decision-making function, I would happily agree that, for any decision that is delegated to a level below SES, it is appropriate to identify the decision-maker even if that person is more junior. For an example at the limits of this, APS 5 staff have financial delegations (albeit with severe spending limits). It would be perfectly appropriate to release the names of an APS 5 financial decision-maker if documents relating to a relevant purchase were being sought, unless an extremely compelling reason were provided to withhold the decision-maker's identity.

As per the logic outlined in the Act for conditional exemptions, the greater the public interest in releasing a staff-member's identity, the more compelling the reason must be to withhold it, and vice-versa. The readily-distinguishable difference in public benefit from identifying SES decision-makers as opposed to APS-level advisors provides, in my view, a clear rationale for different norms regarding the release of staff-members' names, that incorporates consideration of staff-members' seniority.

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There is one further argument to establish a difference between SES and junior staff when considering the balance between protecting staff identities and enabling transparency around decision-making. SES bear a radically-different degree of responsibility than do normal staff. They are employed under a separate contracting system, are expected to be available at hours junior staff are not, are expected to manage pressures that normal staff are not, and are given significantly greater remuneration and other benefits as a result. It is appropriate that SES operate as shields for their junior staff, whether that be deflecting unreasonable pressure from a ministerial office, or being the public face of controversial decisions. Junior staff do not receive the same benefits, nor the same remuneration. It is not appropriate to expose junior staff to equivalent personal and reputational risks.

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In conclusion, I believe Commonwealth departments are generally making appropriate decisions regarding when to release the names and contact details of their staff. I think that the growing frequency the report describes of Freedom of Information applicants seeking the names of junior staff is indicative of the concerns I outlined above regarding an increased tendency in society to hold the individual responsible for institutional decisions. I believe there is today a radically-different risk profile associated with the release of the names and contact details of staff than there was when the Act was introduced or when Memorandum no. 94 was prepared. As a result, I ask that the you as Commissioner act with utmost caution in making any recommendations to agencies that they ought to explore whether it is possible to release junior staff-members' names more frequently than currently they do. Staff deserve not only be safe in fact, but to feel and be confident in that safety. Staff deserve the ability to clock off, go home, and no-longer be identifiable as the person who worked on a particular decision.

Thank you.