



Administrative Appeals Tribunal

15 August 2019

Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001
Via email: foidr@oaic.gov.au

Dear Commissioner,

Disclosure of public servants' names and contact details

Thank you for the opportunity to make submissions on the Office of the Australian Information Commissioner's (OAIC) Discussion paper: *Disclosure of public servants' names and contact details*.

Scope of submissions

As you know, the Administrative Appeals Tribunal (AAT) may review decisions made under the *Freedom of Information Act 1982* (FOI Act), in its Freedom of Information (FOI) Division. In addition, the AAT responds to requests for documents made directly to us relating to documents we hold. These requests may be made under the FOI Act, under the *Migration Act 1958* or through our administrative access procedures. The comments in this submission relate only to the processing of requests for documents made directly to us, for documents we hold. This submission does not provide comments on review decisions made under the FOI Act in the Tribunal's FOI Division.

Background and general comments

Since amalgamating with the Migration and Refugee Review Tribunals (MRT-RRT) and Social Security Appeals Tribunal (SSAT) in 2015, the AAT has received approximately 1,500 requests under the FOI Act each financial year. The majority of these requests concern access to documents relating to applications for review by the Tribunal and are made by review applicants and their representatives or, less frequently, third parties.

As the AAT's function is to review the decisions of other government agencies, documents originating with other agencies usually fall within the scope of FOI requests made to the AAT. We transfer in full to other government agencies, approximately one fifth of all FOI requests we receive. In the course of processing all other remaining requests, we regularly consult other government agencies in relation to documents

originating with them. The responses to consultation from other agencies frequently include requests to redact the names and / or the direct contact details of agency staff. I understand that the AAT's FOI officers generally accede to these requests where the details have not been included on external correspondence and are not otherwise publicly available. The reasons for doing so include the following:

- The release of direct contact details of agency staff will divert members of the public from using the agency's official contact channels, resulting in unlogged enquiries not being actioned, or inefficiency from redirecting enquiries;
- Unnecessary risk to health and safety of staff. Note that for privacy reasons, agencies are not advised of the identity of the person making the FOI request and are not in a position to make an assessment of the use to which the information may be put, how securely it may be kept or how widely it may be disseminated. While AAT FOI officers do know the identity of the requestor, the AAT FOI officers have less knowledge about that person's relationship with the agency staff concerned. Given that information cannot be recovered and can be widely disseminated via the internet once released, AAT FOI officers will take a conservative approach where health and safety concerns are raised;
- Release would undermine agency policy not to provide full names of customer service staff on public correspondence. Note that in some cases, these policies have been embedded in enterprise agreements;
- Risk of fraud in relation to signatures; and
- The name and contact details of agency staff are not widely known in relation to the subject matter and are merely incidental to the request.

Our FOI officers do not recall any internal reviews sought by FOI requestors in respect of the redaction of agency staff names or contact details in the last three financial years.

Please find attached our responses to the OAIC's consultation questions.

Should you require any further information about this submission or the AAT's FOI processing in general, please contact Sandra Koller, Director Legal and Policy, on (02) 9276 5502.

Yours sincerely,



Sian Leathem
Registrar

Attachment

Discussion Paper: Disclosure of public servants' names and contact details

Consultation Questions

- 1. Does your agency have concerns about releasing the names and contact details of staff in response to FOI requests? If so, what are your concerns? Has your agency experienced any specific work health and safety issues as a result of a person's name or contact details being released in response to an FOI request?***

Yes.

The AAT generally does not release the direct contact details of Tribunal staff in response to FOI requests, where this information has not already been provided to the person making the request in the course of a review. This is because we have official contact channels and encourage customers to use those channels. We wish to avoid the dissemination of alternate contact information, which can be easily done by a recipient posting it on the internet, for example through the RightToKnow website. The unsolicited use of direct contact information can lead to delays in acting on communications, as staff members may be on leave or unfamiliar with the content of that communication that should have been directed elsewhere. In addition, time limits apply to the lodgement of applications and other documents in the AAT, and failure to action these can have consequences for a person's access to the review process.

Like other public contact agencies, a small proportion of the AAT's customer base exhibit behaviours that are unusually persistent, abusive, threatening or querulant. Some of these customers exhibit these behaviours after the Tribunal makes an unfavourable decision. Staff of the AAT have expressed concerns about being the target of this behaviour and pointed to other agencies that protect their staff by not including full names on correspondence. The AAT has recently responded to the concerns of registry staff regarding their personal safety by altering the automated signature appearing on correspondence so that it no longer includes the staff member's last name. This reduces the risk of unreasonable customer behaviour affecting staff outside the workplace where it cannot be managed through escalation and blocking procedures. This protection would be undermined if a staff member's contact details, which usually includes an email address comprising their first and last name, were released under FOI.

Example

A recent applicant (A) behaved in an abusive manner to AAT staff and the member hearing his case. After receiving a letter with the full name of a registry staff member, A

sent pictures of himself to the AAT staff member's Facebook page, and posted racist comments about her. This made the staff member feel unsafe. The staff member left the AAT eight months into a 12-month contract. While we cannot be certain this incident was the cause of her departure, it is unlikely to have been helpful.

The AAT has also experienced customer behaviours that disrupt its communication channels, including continuous calling and emailing to certain numbers and email accounts. One customer even impersonated other customers in order to continue to contact a particular staff member and evade management strategies.

2. Have your agency's views on this issue changed over time? If so, please describe any factors that have affected your agency's approach, including technological, environmental or legal factors.

Yes.

The AAT has used the full names of staff in the past and also released those names under FOI as a general practice. However, the fact that the recipients of this information may now intentionally or unintentionally rapidly, widely and permanently disseminate information by electronic means, or use information to pursue staff outside the workplace via electronic media such as Facebook, are new considerations. The recent change to registry signature blocks may result in the occasional redaction of registry staff surnames to avoid undermining the change.

3. Does your agency advise staff, including contractors undertaking functions on behalf of the agency, that names and contact details may be released in response to an FOI request as part of your agency's training and induction programs?

No.

4. How do you balance work health and safety considerations with the objects of the FOI Act, which include increasing public participation in Government processes with a view to promoting better-informed decision making and increasing scrutiny, discussion, comment and review of the Government's activities?

As set out under question 1, the AAT does not release direct contact details of its staff, unless these are already known to the requestor or otherwise public. This is primarily because of the potential for disruption to its service provision, but also occurs where there are health and safety risks. The AAT has not received any requests for internal review for the names or contact details of officers which have been redacted. We conclude that, generally, FOI applicants are not seeking the direct contact details or full

names of staff. Note that registry staff have very limited discretion to affect the progress or outcome of a review. As such, there may be very little public value in the release of full names and direct contact details. The names of AAT members who make decisions on reviews are public. Staff names, but not contact details or signatures, may be released in response to the small number of FOI requests that relate to policy matters, rather than case related matters.

5. *If your agency considers that disclosure of a public servant's name or contact details will negatively impact their health or safety, what evidence do you require before deciding that their name or contact details are exempt from disclosure?*

As explained above, direct contact details of AAT staff are not released in order to maintain efficient management of communications with the public. The last name of a staff member may be redacted in case-related matters where this is not known by the person making the FOI request or is otherwise not publicly known. In case-related matters, there may be indicators of unreasonable applicant behaviour on the file. In relation to consulted agencies, we will usually accept concerns raised by a consulted agency. There is however, a difficulty in obtaining evidence because generally we cannot release the name of the person making the request to the other agency. As a result, that agency is unable to make specific comments. Given the fact that the names and contact details of agency staff are usually incidental to the request, in most cases we will take a cautious approach where concerns are raised.

6. *Do you consider the FOI Guidelines provide enough guidance for agencies when considering these issues?*

The AAT considers that the FOI Guidelines do not reflect the real risk that the release of non-senior staff member names and contact details can present, particularly in the context of an increasing use of social media.

7. *In what circumstances do you consider that a public servant's personal information (name and contact details) are irrelevant to the FOI request?*

As set out above, in most cases a public servant's personal information is only incidental to the request. Direct contact details are almost always irrelevant, as agencies have official public channels which are publicised. Last names can be relevant where a decision or action is made or done by staff with genuine discretion to influence an outcome. Junior staff rarely have this influence and are constrained by internal guidelines. Consequently, their full names are usually irrelevant. Senior staff have greater discretion and their names may be relevant, depending on the type of material requested.

8. Where you have withheld the names and contact details of public servants, what impact does deleting this information from documents have on the time it takes to process FOI requests?

We use redacting software. The time taken to redact the names and contact details of public servants depends on the frequency of the words, the number of documents and the format of the documents. As stated above, generally, the AAT does not release the direct contact details of Tribunal staff in response to FOI requests, where this information has not already been provided to the person making the request in the course of a review. For FOI requests lodged by AAT review applicants, the amount of redacting can be minimal where they have already been provided with those names and contact details during the course of the review. Staff names and contact details are usually at the start and / or end of a document and are easily located.