



OFFICIAL

Consultation on draft revisions to Part 5 of the Freedom of Information Guidelines: Exemptions

Submission from the Department of the Prime Minister and Cabinet

Ms Toni Pirani
Acting Freedom of Information Commissioner
Office of the Australian Information Commissioner

Dear Commissioner,

The Department of the Prime Minister and Cabinet (PM&C) welcomes the opportunity to provide comments to the Office of the Australian Information Commissioner (OAIC) on the consultation draft of the Freedom of Information (FOI) Guidelines: Part 5 – Exemptions.

PM&C's Cabinet Division is directly responsible to the Prime Minister and the Cabinet Secretary for the impartial recording of Cabinet decisions and for the administration and development of Cabinet processes. PM&C is also responsible to the Cabinet as a collective for ensuring the confidentiality of Cabinet proceedings and the impartial and effective operation of the Cabinet system. Cabinet Division is the principal source of advice for ministers, ministerial offices, departments and agencies on Cabinet matters, including on the application of the Cabinet exemption to documents subject to access requests under the *Freedom of Information Act 1982* (FOI Act). More information about the Cabinet Division's role is available in the *Cabinet Handbook (15th edition)*.¹

PM&C makes the following comments and suggestions on the consultation draft in relation to guidance on the Cabinet exemption (section 34 of the FOI Act):

- The citation to the Cabinet Handbook at footnote 51 should be removed as this reference in the most recent version of the PM&C Cabinet Handbook (15th edition) is no longer present. Instead the paragraph at 5.65 should read:

¹ See Annex A – Roles and Responsibilities
https://www.pmc.gov.au/sites/default/files/resource/download/cabinet-handbook_0_0.pdf

5.65 The Department of the Prime Minister and Cabinet (PM&C) asks that agencies and ministers consult the PM&C FOI Coordinator (at foi@pmc.gov.au) on any Cabinet-related material identified within the scope of an FOI request.

- PM&C notes the OAIC's guidance at paragraph 5.83 which states that a document "refers to a Cabinet meeting date or Cabinet document reference number could be considered to contain an extract from a Cabinet document for the purposes for s 34(2) in certain circumstances". PM&C seeks further guidance on the treatment of Cabinet dates in diary entries and the circumstances in which it would be appropriate to exempt information under s 34(2). This could be done with particular reference to *Rex Patrick and Department of Defence (Freedom of information) [2019] AICmr 19*.²
- PM&C suggests the Guidelines at 5.85 could provide useful guidance on the types of documents the OAIC considers would be appropriate to exempt under section 34(3) of the FOI Act.
- At paragraph 5.87, the Department notes the matter of *Warren and Services Australia (Freedom of information) [2019] AICmr 70*³ is on appeal to the Federal Court of Australia.

On a separate note, PM&C notes the closing observations of the Royal Commission into the Robodebt Scheme, specifically, that section 34 of the FOI Act should be repealed.⁴ The Australian Government has indicated its commitment to carefully considering and appropriately responding to the work of the Royal Commission. To that end, the Government has asked that the Secretary of the Department of the Prime Minister and Cabinet, Professor Glyn Davis AC, the Secretary of the Attorney-General's Department, Ms Katherine Jones PSM, and the Australian Public Service Commissioner, Dr Gordon de Brouwer PSM consider the Royal Commission's recommendations and lead the development of advice to the Government on responding to the report. This will involve efforts from across the public service. A response will be provided later this year. Where the outcomes of the Government response would require further changes to the OAIC Guidelines, we will look forward to working with you on that process.

PM&C has also provided, by way of email, a number of minor editorial comments and suggestions to the OAIC which I have not included in this formal submission.

² Rex Patrick and Department of Defence (Freedom of information) [2019] AICmr 19. Available at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AICmr/2019/19.html>

³ *Warren and Services Australia (Freedom of information) [2019] AICmr 70*. Available at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AICmr/2019/70.html>

⁴ Royal Commission into the Robodebt Scheme Final Report. Available at: https://robodebt.royalcommission.gov.au/system/files/2023-07/report_of-the-royal-commission-into-the-robodebt-scheme.pdf

Thank you for the opportunity to provide submissions on this consultation and please do not hesitate to contact PM&C at foi@pmc.gov.au if you would like to discuss this further.

Yours sincerely,



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