



9 August 2019

Ms Angelene Falk  
Australian Information Commissioner and Privacy Commissioner  
Office of the Australian Information Commissioner

By email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Dear Ms Falk

Thank you for inviting submissions on whether public servants' names and contact details should be disclosed in response to a Freedom of Information (FOI) request.

2. The Department of Foreign Affairs and Trade (the department) endorses the Australian Public Service Commissioner's (APSC) submission dated 31 July 2019 (APSC Submission).

**Information about public servants in the course of their usual duties or responsibilities**

3. Section 47F of the *Freedom of Information Act 1982* (Cth) (FOI Act) conditionally exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person. Section 47F(2) of the FOI Act sets out four criteria for an agency or Minister to consider in determining whether the disclosure of a document would involve an unreasonable disclosure of personal information.

4. Personal information has the same meaning as in the *Privacy Act 1988* (Cth), which is defined as:

*"information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in material form or not."*

5. In the context of public servants in the course of their usual duties or responsibilities, the department has taken personal information to mean the name, position or title and direct contact details of its officers.

6. In addition to the criteria in section 47F(2) of the FOI Act, paragraph 6.154 of the FOI Guidelines provide:

*"when considering whether it would be unreasonable to disclose the names of public servants, there is no basis under the FOI Act for agencies to start from the position that the classification level of a departmental officer determines whether or not [their] name would be unreasonable to disclose."*

7. The department does not support the current formulation of paragraph 6.154, as explained below. The department notes that the personal information of Senior Executive Service (SES) officers are more likely to be publicly available given their role and decision making responsibilities. High-level decision making in the public service occurs through a rigorous process of consultation and clearance before finalisation to

ensure consistency, accuracy and robustness of assessments. Junior officers (APS5-EL1) are generally responsible for drafting initial versions of documents, which may be cleared by EL1 and EL2 officers, while decision making responsibilities often rests with officers in the SES. Accordingly, it would generally not be unreasonable for their personal information (name and position or title) to be disclosed as part of an FOI request, unless the section 47F(2) criteria is met or where other exemptions apply. For example, where the department considers disclosure would, or could reasonably be expected to, endanger the life or physical safety of a person (section 37(1)(c) FOI Act).

8. The department is of the view there is a reasonable risk that releasing the names of junior officers could subject those officers to unsolicited contact by an FOI applicant and potentially other members of the public, seeking to gather further information related to the FOI request. Where junior officers are named and sensitive issues are identified in the documents (for example, emails, cables and briefings requested by an FOI applicant), which reveal deliberative processes or sensitive matters, those officers may be identified and targeted for further information. This would have an adverse effect on the department's ability to encourage its officers, especially non-SES officers, to be involved in discussions about high profile or sensitive matters, as their names could be publicly associated with those matters. This would have a substantial adverse effect on the department's operations.

### **Public interest**

9. In terms of the public interest test, the department notes the section 11B(3) of the FOI Act sets out four factors favouring access, including:

- (a) promote the objects of the FOI Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person to access their personal information.

10. The department considers there is no identifiable basis for any public interest in releasing the names or contact details of non-SES officers in a document subject to an FOI request. Disclosure would not allow members of the public to scrutinise departmental operations or expenditure or allow insight into the department's decision making processes.

11. The department supports the APSC's submission that disclosure of a public servant's position or title could satisfy the public interest of knowing who (i.e. specific position in the department) was involved in a particular matter or decision without needing to know the name or contact details of the individual.

12. The department considers disclosing the names of non-SES officers could reasonably be expected to harm the interests of departmental officers involved. Paragraph 6.22 of the FOI Guidelines set out a non-exhaustive list of public interest factors against disclosure. Specifically, paragraph 6.22(a)(iii) provides that there could be a public interest factor against disclosure where a disclosure:

*"could reasonably be expected to prejudice the protection of an individual's right to privacy, including where...(iii) the personal information is that of a government employee in relation to personnel management and the disclosure of that information could be reasonably considered to reveal information about their private disposition or personal life."*



13. With the ease of accessing information online, the department considers the disclosure of the names of current departmental employees could potentially reveal information about an employee's private disposition or personal life through accessible online resource, which was not available when the FOI Act was introduced. With the expansion and prevalence of social media, a departmental officer's name and contact details could be used to identify them on social media and to obtain information about their personal life and social networks. This could reasonably be expected to prejudice the protection of an individual's right to privacy in a way that would be unreasonable and disproportionate to the benefit (to the extent it exists) that would flow to the FOI applicant.

***The department's work, health and safety obligations to its staff***

14. The department considers the disclosure of the names of departmental officers could potentially adversely impact its ability to:

- (a) comply with its health and safety obligations under the *Work, Health and Safety Act 2011* (Cth) (WHS Act); and
- (b) protect its workforce from psychological and physical harm, criminal influence and to mitigate the potential for corruption.

15. Commonwealth agencies and departments have a primary duty of care to ensure, as is reasonably practicable, the health and safety of its workers under the WHS Act. The WHS Act imposes duties on the department to ensure, as is reasonably practicable, that the health and safety of its workers is not put at risk from work carried out as part of the conduct of the department.

16. Risks to health and safety include the potential exposure of staff to psychological hazards such as stress, violence and other workplace stressors. In light of the examples outlined in the APSC's submission, the department is of the view the likelihood of health and safety risks to its staff arising from the department's disclosure of their names is real and is not based on intangible or hypothetical possibilities.

17. Further, the department does not publish outside the department, the names and direct contact details of non-SES staff, in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

18. It is also not in the public interest to impede the management of personnel in the department or other agencies by exposing officers to a risk of targeting and intimidation. In the long-term, this would reduce the likelihood of departments and agencies being able to recruit and retain staff. As outlined in the APSC's submission, the APSC is aware of some agencies reporting difficulty recruiting individuals to FOI positions, as well as individual APS employees expressing concerns about release of their personal information.

Yours sincerely



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