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Office of the Australian Information Commissioner
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via email: foidr@oaic.gov.au

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

CSIRO refers to the Office of the Australian Information Commissioner's (OAIC) discussion paper *Disclosure of public servants' names and contact details*.

CSIRO would like to take this opportunity to provide an alternative viewpoint to the position of the discussion paper that names and contact details of CSIRO Officers should ordinarily, except in very limited circumstances, be released under the *Freedom of Information Act 1982* (Cth) (FOI Act).

- 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.

CSIRO's primary concern is that CSIRO Officers who have been involved in a FOI process have indicated that they are now more apprehensive when engaging in internal correspondence about potentially controversial science topics.¹ CSIRO wants to encourage staff to engage in full and frank discussion of scientific analysis and advice. Testing, exploring and debating is not only fundamentally important to the exercise of scientific rigour but is critical to ensuring CSIRO's advice to Government is of the highest integrity. CSIRO Officers should not be apprehensive that their names and contact details will be released to the world – even where the content of their correspondence is.²

CSIRO is also concerned that a number of CSIRO Officers have been negatively impacted by the release of their names and contact details under the FOI Act. CSIRO Officers have been contacted, inappropriately and even threateningly, in relation to documents released under the FOI Act.

- 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.**

CSIRO removes all contact details for individual CSIRO Officers pursuant to s 22 (irrelevant material),³ unless contact details are specifically requested by the Applicant. CSIRO ensures that the Applicant is aware that contact details will be removed under s 22 by including this information in the acknowledgment letter issued pursuant to s 15(5)(a) of the FOI Act.

¹ A position that is equally applicable to e.g. internal discussions in relation to controversial management topics and or Departmental staff engaging in a full and frank discussion of Government policy in a controversial area.

² CSIRO notes the specific exemption applicable to incomplete research under s 47H, noting this is a conditional exemption.

³ Noting CSIRO does not remove the Organisation's contact details so contact with the Organisation is not impeded.

CSIRO's decision to proactively redact contact details pursuant to s 22 was developed, in part, in response to the experiences of CSIRO Officers who had been contacted after the release of their contact details under FOI. CSIRO considered implementing the practice of other Agencies, whereby all names and contact details of staff (other than senior staff) are removed pursuant to s 47F. However, noting the guidance of the OAIC, including under *'The Guidelines issued under s 95A of the Freedom of Information Act'* (the Guidelines) and relevant precedent case law in relation to the application of s 47F, CSIRO determined that it would likely lead to a disproportionate increase in requests for reviews should names and contact details of all CSIRO Officers be redacted pursuant to s 47F.

CSIRO's FOI Unit experienced positive feedback from staff in relation to the removal of contact details pursuant to s 22. Whilst many CSIRO Officers still expressed concern that their name would be released, the removal of contact details provided some level of reassurance.

To provide a concrete example in relation to the level of concern expressed by staff, in a sample of ten recent FOI requests (for contemporary correspondence, rather than historical documents) CSIRO Officers expressed concern in relation to the release of their name in eight of those requests. The majority of this concern was founded on the expectation of direct contact, which would disrupt usual work practices (cf contact via the appropriate channels which can occur at a mutually convenient time). Given the amount of concern expressed by staff, the FOI Unit spends a significant amount of time reassuring staff and encouraging their engagement with the FOI process.

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?

CSIRO's formal induction process does not involve informing new-starters that their contact details may be released under FOI. However, new-starter training packages and ongoing FOI training seminars provides this information. FOI training is highly sought after at CSIRO, noting the FOI Unit conducted nine training sessions over the last twelve months.

CSIRO's FOI Unit is committed to protecting the health and safety of CSIRO Officers and thoroughly reviews any concern in relation to the release of CSIRO Officers' name under FOI. However, the CSIRO FOI decision makers are constrained in the ability to remove CSIRO Officers' names, due to the strict application of the *Re Bartucciutto and Commissioner for Complaints* [2006] AATA 36 (17 January 2006) and subsequent precedent case law.

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 increased scrutiny, discussion, comment and review of the Government's activities?

Noting CSIRO's current practice of releasing all CSIRO Officers names unless the principles of *Re Bartucciutto* can be applied, CSIRO asks that the OAIC consider CSIRO's view that the release of the names and contact details of every individual CSIRO Officer does not significantly contribute to the purpose of the FOI Act, where the substantive content of the document is released.

When the substantive content of the document is released, the names and contact details should be considered irrelevant (except in limited circumstances) for the reasons articulated below:

Contact details:

CSIRO provides members of the public multiple communication avenues, including (but not limited to) a dedicated CSIRO Enquiry and CSIRO Complaint telephone and email address, social media communication (Twitter/Facebook/Instagram) and postal addresses. CSIRO also provides the contact details for Senior Management (the CSIRO Executive Team) online. CSIRO therefore cannot provide any examples where the release of the contact details of CSIRO Officers would increase public participation in Government processes with a view to promoting better-informed decision making or increase scrutiny, discussion, comment and review of the Government's activities. Any complaint, query or comment is more properly and efficiently addressed via the communication channels listed above. Thus, all contact details should be considered irrelevant in relation to any FOI request.

Names:

CSIRO acknowledges that where a FOI request captures a decision made by CSIRO, the decision-maker's name should be released in the interest of transparency and accountability. In CSIRO's view this would mean the release of the names of the senior officers who, ultimately, are responsible for the decision on behalf of the CSIRO. As outlined above, CSIRO publicises the names (and indeed contact details) of all Executive Team Members who are the decision makers responsible for the totality of CSIRO activities.

Ensuring that CSIRO Officers engage in full and frank discussion, without the apprehension that their names and contact details will be released, does not detract from the purpose of the FOI Act but rather increases transparency and accountability, noting that should the CSIRO Officer's discussion inform a decision, the substantive discussion and the responsible decision maker's name would be released in response to a FOI request for the same.

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?*

Currently, to substantiate the application of s 47(F) in accordance with the principles of *Re Bartucciotto*, CSIRO's FOI Unit requires evidence of inappropriate contact in relation to either the subject matter of the FOI request or by the Applicant. Evidence includes contemporaneous documents or the recollection of the contact.

Where CSIRO's FOI Unit has information that could establish, on reasonable grounds, that a CSIRO Officer's health may be adversely impacted by the potential release of their name under FOI (not founded on previous contact or experiences), CSIRO's FOI Unit will consider seeking consent from the Applicant to remove all names,⁴ or alternatively, will remove the names pursuant to s 22 or s 47F. CSIRO notes that the applied exemptions may not be upheld by the internal reviewer, the OAIC or AAT but CSIRO's FOI Unit would prioritise, in the first instance, protecting a CSIRO Officer's health over the strict application of s 22 of s 47F.

CSIRO has not utilised s 37(1)(c) to remove the names and contact details of CSIRO Officers, noting that in one case the threats occurred after the release of the names of CSIRO Officers under FOI (not before).

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

The guidelines are clear and comprehensive. However, as stipulated above, CSIRO believes that the release of the names and contact details of CSIRO Officers is not necessary to promote accountability and

⁴ Noting a sophisticated Applicant, who is not seeking their own personal information, will usually agree to this request.

transparency and are thus irrelevant – except in those circumstances articulated above, in response to question (4). Contrary to the current guidelines, the wider application of s 22 to names and contact details should be considered.

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

CSIRO notes CSIRO's response to question (4) above.

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?*

Redacting the names and contact details of CSIRO Officers does require additional processing time, particularly in relation to requests that capture voluminous amounts of correspondence. However, the additional time is minimal, if the relevant software is utilised, and thus in CSIRO's view, is insignificant.

If you have any questions, or wish to discuss any of CSIRO's submissions in more detail, please do contact me.

Yours sincerely,

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CSIRO