



**Australian Government**

**Inspector-General of Taxation**

**Taxation Ombudsman**

Telephone: 1300 44 88 29  
Facsimile: 02 8239 2100

GPO Box 551  
Sydney NSW 2001

13 August 2019

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

Ms Angelene Falk  
Australian Information Commissioner  
175 Pitt Street  
Sydney NSW 2000

Dear Ms Falk,

**SUBMISSION TO THE**

**OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER**

**DISCUSSION PAPER – DISCLOSURE OF PUBLIC SERVANTS' NAMES AND CONTACT DETAILS**

Thank you for the opportunity to comment on the discussion paper concerning the disclosure of public servants' names and contact details. We acknowledge that disclosure of public servants' personal information in documents that are subject to requests made under the *Freedom of Information Act 1982* (FOI Act) has been a cause of concern for a number of Commonwealth agencies. Our submission is divided into two parts:

- the first provides a broad overview of the functions of our office and the main reasons why we believe that disclosure of our officers' names and contact details should not be made in response to broad-based FOI requests (for example full telephone lists); and
- the second provides our response to each of the 8 questions posed by your office (the OAIC) in the discussion paper.

The Office of the Inspector-General of Taxation and Taxation Ombudsman (IGTO) supports the objects of the FOI Act and the open and transparent administration of Government. We foster a culture of openness with all taxpayers who seek to use our services. In this regard, as a matter of practice, we disclose full name and contact details of our officers who engage directly with relevant parties in respect of their dealings with our office. Accordingly, it is important to note that we do not generally object to the disclosure of our officers' names and contact details in these circumstances. However, we have serious concerns about the names and contact details of officers who are unconnected with a case or where the FOI applicant has lodged requests seeking carte blanche access to the names and contact details of all of our personnel. Our submission is aimed at addressing these concerns.

---

## **PART 1: THE ROLE OF THE IGTO AND OUR SUBMISSION**

### **1.1 Role of the IGTO**

The IGTO is an independent statutory agency established under the *Inspector-General of Taxation Act 2003*. Our purpose is:

1. to improve the administration of taxation laws for the benefit of all taxpayers, tax practitioners and other entities; and
2. to provide assurance (to individual taxpayers, agencies and the community in general) through investigation, review and reporting that Australian taxation administration laws are operating effectively and consistent with the laws and community expectations.

In discharging our purpose, we have two core functions, namely:

1. as Taxation Ombudsman we receive and investigate complaints from taxpayers and tax professionals about the administrative actions of the Australian Taxation Office (ATO) and the Tax Practitioners' Board (TPB); and
2. as the Inspector-General of Taxation we conduct broader reviews on areas of tax administration that are of concern and to identify opportunities for improvement.

We operate a single tax specialist office, comprising approximately 30 members of staff (including the IGTO herself and her Deputy) out of a single office with national responsibility. Annually, we receive and deal with close to 3,000 complaints and enquiries and, historically at any one time, have between one to four active reviews.

Complaints from taxpayers or tax professionals may be received by the IGTO through a number of different channels including a web form, dedicated telephone line which records all incoming calls from and outgoing calls to complainants, email, facsimile, post and (in some circumstances) Facebook.

Due to the size and work design operations of our office, there is no physical or functional separation between the call centre and complaint case management. All of our officers attend to frontline telephone duties in dealing with complaints, generally. We also have a single contact approach to ensure complainants have a dedicated contact officer managing their complaint directly from investigation to finalisation to maximise communication and minimise timeframes toward resolution of their matter. Our officers provide their full name and contact details to complainants for this purpose. As a consequence our office does not operate a 'cab rank' allocation system when dealing with complainant contact.

As part of our complaints investigation and review functions, the IGTO may generate internal correspondence and documents, or exercise broad information gathering powers<sup>1</sup> to obtain information and documents from the ATO and the TPB.

---

<sup>1</sup> *Ombudsman Act 1976*, s 9 which operates by virtue of *Inspector-General of Taxation Act 2003*, s 15.

FOI applications to our office are typically made by complainants (or their representatives) in respect of their own complaint. These FOI applications usually seek access to any documents that have been created or received during the course of the complaint and may also include recordings of our telephone conversations. Each FOI application requires the IGTO to consider the disclosure of public servants' names and contact details. Due to the nature of electronic communications, a single document may require multiple considerations (e.g., where there are chains of email correspondence with multiple signature blocks).

## **1.2 Our concerns about disclosure of our officers' names and contact details**

As we have set out above, the IGTO generally provides complainants with the full name and direct contact details of the officer who has responsibility for the management of the complaint investigation. We are naturally happy to do so. Our concern about the release of names and contact details does not extend to these cases, but rather in instances where complainants have sought to use FOI to seek broad or carte blanche access to all our officers' contact details including those of officers not involved in the management of the complaint investigation.

It is our view, that names and contact details should not be disclosed in response to broad requests of this nature under FOI for the following reasons:

- 1.2.1 *there would be adverse impacts on the efficient operation of our agency and our ability to manage unreasonable conduct;*
- 1.2.2 *there would be adverse impacts on the health and wellbeing of our officers and our ability to manage personnel;*
- 1.2.3 *the release of the information would impinge upon the personal privacy of our officers; and*
- 1.2.4 *names and contact details of officers do not advance the objects of the FOI Act.*

Each of these is discussed further below.

### **1.2.1 Efficient operation of our agency and managing unreasonable conduct**

Our office has approximately 30 employees, around 20 of whom engage directly in providing our frontline complaints service functions. Operating within this small agency environment, we have strong and clear processes for the receipt, capture and management of complaints.

All complaints received are recorded on our centralised ICT case management system and allocated to a specific complaints officer based on resource planning, experience and expertise. All case officers are overseen by a manager at the Executive Level who provides guidance and oversight to ensure our service is fair and our decisions are reasoned for complainants as well as being efficient and effective in the management of our resources.

Our ability to undertake such allocation is essential to the efficient and effective operation of our service delivery by:

- ensuring that complainants' concerns are addressed by a single dedicated officer to provide a personal, holistic and consistent service to them to foster their trust and confidence;

- enabling our dedicated officers to appropriately obtain fulsome information for conversations with complainants and minimise 'communication gaps' to foster understanding;
- reducing risk that complainants 'jump the queue' or 'shop around' our complaints team; and
- reducing risk that complainants unreasonably escalate cases that are still under investigation.

Once a dedicated officer is allocated to a case, they engage directly with the complainant and provide their full name, as well as their recorded telephone line extension which may be used by the complainant to reach that officer directly. The use of recorded telephone lines provides accountability, transparency, quality assurance and support.

The disclosure of telephone lists of names and contact details would create an unmanageable risk for our office. Complainants may seek to use those contact details to essentially bypass allocated officers and 'jump the queue' by escalating their complaints outside of proper channels. This creates an additional risk of officers being put on the spot regarding complaints they know nothing about, providing incorrect or inappropriate advice.

Unreasonable behaviour or conduct, a phenomenon that is well-documented in ombudsmen literature<sup>2</sup> further exacerbates situations of this nature. While these are generally uncommon, where they do arise, they consume considerable agency resources and subject our officers to high levels of stress and anxiety. Even in the short time that our office has managed the Taxation Ombudsman function, we have experienced a range of such behaviours, including:

- a complainant who rang our main telephone line repeatedly and continuously (70 times within 90 minutes), threatening our staff and using vulgar and denigrating language towards them which necessitated us to refer the matter to our security advisers in Treasury and ultimately a briefing to the Australian Federal Police;
- another complainant who used our complaints handling telephone line to 'shop around' for officers to respond to her calls, repeatedly acted aggressively towards them and demanded that her matter be escalated. She has to date, spoken to at least 13 of our officers, including two at the Executive Level; and
- a third complainant who has made offensive racial and sexual slurs against our staff by email.

Complainants convicted of serious criminal offences, and/or linked to organised crime also request assistance from our office. This requires us to consider and actively manage or limit our contact officer channels and also the actual identity of our officers due to associated risks and potential wellbeing and work health and safety issues.

We do not consider that every applicant seeking access to our officers' names and contact details has exhibited the unreasonable behaviours. However, we have also borne in mind that the FOI Guidelines issued by the OAIC provides that there is nothing in the FOI Act which limits what an applicant may do with the released documents, and a decision to give a person access should be made in the knowledge

---

<sup>2</sup> New South Wales Ombudsman, *Managing Unreasonable Complainant Conduct*, 2<sup>nd</sup> Ed (2012).

that the applicant may share the content of the documents with others or publish them to a larger audience.<sup>3</sup>

Therefore, we are concerned that broad disclosure of the names and contact details of public servants would create an unmanageable risk for our office. While we accept that in undertaking a complaints handling service, there will be occasions in which we are required to deal with unreasonable conduct, as is the experience to date. Our ability to modify and restrict access is of paramount importance for the effective management of our service delivery. This approach has been recommended by Ombudsman services throughout Australia.<sup>4</sup>

### **1.2.2 Health and wellbeing of our officers and our ability to manage of our personnel**

The health and wellbeing of our officers who operate at the frontline in assisting clients and are, at times, required to deal with unreasonable conduct is an important consideration.

We recognise that emotions displayed by complainants are exacerbated when unreasonable conduct is exhibited towards our team members. This presents an increased risk of stress and adverse work health and safety of staff working in complaint services and are well-documented and recognised across Australian jurisdictions and internationally.<sup>5</sup>

As an employer, the IGTO has a primary duty of care under the *Work Health and Safety Act 2011* (WHS Act) to ensure the health and safety of staff working for the agency. This includes providing safe systems of work. In the event that the risks to health and safety cannot be eliminated, the IGTO is required to minimise those risks so far as is reasonably practicable.<sup>6</sup> The WHS Act sets out a range of enforcement options for failing to discharge the duty, including on-the-spot fines issued by the WHS regulator's inspectors and prosecutions that could result in heavy fines up to \$3 million or other non-monetary sanctions.<sup>7</sup>

Whilst the IGTO cannot eliminate the risk and impacts of unreasonable conduct on our staff, we are required by law to take proactive actions to minimise it insofar as possible. One of the ways we have done so is to instruct and assist our officers, during their induction, to apply for a suppression of their records on the public databases of the Australian Electoral Commission (AEC). The protection of our officers' names and contact details, where it is not directly related to the management of a case is another measure that we adopt.

In addition to the statutory duties and risk of sanctions, the protection of our officers' health and wellbeing is also directly linked to the efficient operation of our agency. Unlike larger organisations and departments, our office cannot easily absorb the impacts of extended unplanned leave or absences due to stress or fatigue. To put that into perspective, one person requiring leave due to impact of stress or fatigue represents a 5 per cent reduction (approximately) in our complaints

---

<sup>3</sup> Office of the Australian Information Commissioner, *FOI Guidelines* (2016) para 3.36.

<sup>4</sup> New South Wales Ombudsman, *Managing Unreasonable Complainant Conduct*, 2<sup>nd</sup> Ed (2012).

<sup>5</sup> See for example: Victorian Ombudsman, *Good Practice Guide to Complaints Handling* (2016) <[www.parliament.vic.gov.au](http://www.parliament.vic.gov.au)>; NSW Registrar of Community Housing, *Guidelines for Managing Unreasonable Complainant Conduct* (2018).

<sup>6</sup> *Work Health and Safety Act 2011*, divisions 2 – 4.

<sup>7</sup> *Work Health & Safety Act 2011*, division 5.

handling team. Due to our rostering system for telephone duty, the impacts may be as high as 15 to 20 per cent.

### **1.2.3 Personal privacy of our officers**

We have had the benefit of reading the submission lodged by the Australian Public Service Commission (APSC) in respect of the personal privacy impacts on the disclosure of public servant names and contacts. We agree with the APSC's statement that:

*Today, an individual's identity may be connected effortlessly with a vast range of personal information available through social networks, such as: photographs; friends' and family members' identities and photographs; employment histories; social activities and interests; personal opinions, including political opinions, and so on.<sup>8</sup>*

These comments align with observations made by the Australian Information Commissioner in 'BA' and Merit Protection Commissioner,<sup>9</sup> namely that:

*It is now considerably easier for a person who has obtained information under the FOI Act to disseminate that information widely, to do so anonymously and to comment upon or even alter that information... Material that is published on the web may remain publicly available for an indefinite period. It may cause anxiety to a public servant that material about their suitability for a particular appointment can be publicly available long after the appointment and to an indeterminate audience.<sup>10</sup>*

We further endorse the APSC's submission that:

*...in the current FOI and information technology environment, even the potential for an APS employees' personal information to be used in this way can have a negative impact on the health and wellbeing of APS employees who are simply performing their duties.<sup>11</sup>*

While the quantification would be material and such impacts may be difficult to assess on an APS-wide level, the impacts on an agency of our size are significant, as noted earlier.

We note that the OAIC's FOI Guidelines currently state that:

*Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.<sup>12</sup>*

---

<sup>8</sup> Australian Public Service Commission, *Submission to the Australian Information Commissioner – Disclosure of public servants' names and contact details under the FOI Act* (31 July 2019) p 4.

<sup>9</sup> 'BA' and Merit Protection Commissioner [2014] AICmr 9 (30 January 2014).

<sup>10</sup> 'BA' and Merit Protection Commissioner [2014] AICmr 9 (30 January 2014) at [81].

<sup>11</sup> Australian Public Service Commission, *Submission to the Australian Information Commissioner – Disclosure of public servants' names and contact details under the FOI Act* (31 July 2019) p 6.

<sup>12</sup> Office of the Australian Information Commissioner, *FOI Guidelines*, para 6.153,

<<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>>.



We believe that the above position should be revisited, as outlined in section 1.2.4 below.

#### **1.2.4 Does not advance the objects of the FOI Act**

The objects of the FOI Act are intended to promote Australia's representative democracy by contributing to:<sup>13</sup>

- (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;*
- (b) increasing scrutiny, discussion, comment and review of the Government's activities.*

In our experience, the inclusion of public servant names and contact details does not contribute to the objects of the FOI Act. In the IGTO's view, the above objects are sufficiently served where the documents released contain:

- the decision and reasons for decision, including any materials relied upon by the decision maker;
- the position and authority of the decision maker to make that decision; and
- channels for reconsideration, internal review, escalation, secondary or follow up complaints (internally or externally), or judicial review, as the case may be.

We have not had an FOI application where, in our view, the inclusion of public servant names and contact details has added or could add value to the overall information provided in those documents. In no application to our office, where the applicant has insisted upon the release of officers' names and contact details, has the applicant indicated the reasons why he or she *needs* the contact details of officers unconnected to their case. This leads us to conclude that the only reason to request the information is so that it may be used in ways which would interfere with our agency's efficient operation or to otherwise place undue pressure on the officers serving the case. Importantly as an Ombudsman our office has a duty to be impartial in the services that we provide and undue influence or other factors employed to affect that independence of our officers is inappropriate.

Having regard to the above and the heightened concerns regarding personal privacy in the wake of scandals such as Facebook and Cambridge Analytica,<sup>14</sup> we believe that it would be beneficial for the OAIC to revisit the FOI Guidelines to reflect heightened and different privacy concerns that currently exist within the system. In particular, we consider that the onus should be reversed, that where information is not publicly available and unconnected to their case, the applicant should demonstrate special circumstances which would warrant the release of public servants' names and contact details.

---

<sup>13</sup> *Freedom of Information Act 1982*, sub-s 3(2).

<sup>14</sup> Office of the Australian Information Commissioner, *News and Media* (5 April 2018), <<https://www.oaic.gov.au/updates/news-and-media/facebook-and-cambridge-analytica/>>.

## **PART 2: RESPONSE TO THE 8 QUESTIONS IN THE OAIC DISCUSSION PAPER**

### ***2.1 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?***

We have concerns about the broad disclosure of the names and contact details of our officers or shopping lists of contact details in response to FOI requests, for the reasons set out in Part 1.

As noted in Part 1, unreasonable conduct exhibited towards our officers have created work health and safety concerns for our officers through increased stress or fatigue, which we are managing as an ongoing risk. In addition to encouraging staff to apply to the AEC to suppress their details on publicly searchable databases, we are managing the risk by only releasing names and contact details of relevant officers who are directly assisting complaints with their cases. We do not release names and contact numbers of our officers who are involved in a case or shopping lists of contact details of personnel within our office.

Furthermore, it is our view that the WHS Act requires responsible officers to take action to eliminate work health and safety issues, or to minimise the risk of them arising, rather than being reactive when those issues have impacted our officers and our office.

### ***2.2 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.***

Our concerns about the disclosure of public servants' personal information as outlined above has increased in light of the widespread use of internet, mobile applications and social media in the professional and personal lives of public servants. We recognise that our officers have a digital footprint comprising their digital online activities, actions, contributions and communications, and it can be used by parties in ways that we did not or cannot expect nor control, including illegal actions such fraud or identity theft.

Given that there is nothing in the FOI Act that limits what an applicant may do with the released documents, we are concerned about the disclosure of public servants' personal information. For example, they may be used to access the public servants' digital footprint, and pose privacy and security risks for the individuals.

Due to the pace at which technology has moved, the interconnectedness of people and their activities online and the heightened awareness about personal privacy, we do not believe that our views on the disclosure of our officers' names and contact details will relax over time. If anything, we expect that our concerns will continue to increase and further efforts will need to be employed to protect our team.



**2.3 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?**

We do not specifically inform our officers, including non-ongoing staff and contractors, that their names and contact details may be released in response to an FOI request.

However, all our complaint handling officers undergo an induction program during which they are taken through appropriate templates and methods to respond to complainants, which include providing their full names and contact numbers. We believe that staff would reasonably expect that their details may be disclosed in response to an FOI request.

Our current approach as noted above ensures complainants receive the full contact details of the officer providing their service. Our team members are naturally aware that their communications do identify them, and further as we do not disclose officer details beyond the need to know basis of that complaint case, an FOI request should present no additional identification in disclosure as that identity has already been provided.

**2.4 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 in Part 1, we do not generally consider that disclosure of the names and contact details of public servants not directly involved in the applicants' own complaint case is consistent with the objects of the FOI Act. Namely, we do not consider that such disclosure would:

1. promote better-informed decision making; and/or
2. increasing scrutiny, discussion, comment and review of the Government's or our office's activities.

We recognise that the person's right of access under the FOI Act is not affected by their reasons for seeking access. However, in the event that a complainant is seeking access to documents relating to their complaints because they are not satisfied with our decision on their complaint, we have a formal review process that is communicated on our website.<sup>15</sup>

It is not necessary for complainants to require the names and contact details of officers not directly involved in their complaint case, to exercise their review rights or for the matter to be escalated to a senior officer. We consider that this approach provides the right balance between the objects of the FOI Act and WHS considerations.

---

<sup>15</sup> Inspector-General of Taxation, *Frequently Asked Questions*, <[www.igt.gov.au](http://www.igt.gov.au)>.

**2.5 *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?***

We understand that in deciding whether to exempt the name and contact details of public servants, there appears to be a requirement for agencies to consider what evidence is available to show that the disclosure will negatively impact their health and safety. Due to the small size of the IGTO, staff concerns and complainant conduct is usually readily accessible.

Where our officers express concern with the release of their details, or where we are aware of unreasonable conduct, we will usually accept those concerns at face value without requiring further evidence. We believe that requiring officers who are already in a position of stress or anxiety to provide evidence of their concerns would only serve to exacerbate that stress or anxiety.

Importantly, we do disclose the details of officer who are directly involved in the case where this may be requested. It is our experience that in most instances, FOI applicants have not insisted upon the disclosure of contact details of officers *not* directly involved in their case. Where applicants consider that those details ought to be disclosed, we have advised them of their rights to seek internal review of the FOI decision or alternatively to seek advice from the OAIC.

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

We note that the FOI Guidelines do not make any reference to the agencies' duty of care to their employees under the WHS Act and the penalties for failing to discharge this duty.

Specifically, paragraph 6.114 of the FOI Guidelines provides that agencies may conditionally exempt documents that relate to management of personnel, including occupational health and safety. However, there is no further guidance available to clarify whether agencies could rely on this ground for the purposes of discharging their legal duty of care under the WHS Act.

Regarding the application of personal privacy exemption for public servants' personal information, and as we noted in Part 1, in the current technological environment, we believe the OAIC should revisit the guidance concerning personal privacy and whether that needs to be updated, specifically paragraphs 6.152 to 6.157. We submit that the onus ought to be on the applicant to show special circumstances why the names and contact details should be disclosed.

If the OAIC does not consider that approach to be appropriate, we believe that further clarification is required on what constitutes 'special circumstances' and the considerations that agencies should take into account when making this assessment, such as the nature of the services they deliver and the level of physical security measures provided to staff.

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

We consider the relevance of public servants' personal information to the FOI request on a case-by-case basis. As noted in Part 1, we have not seen any application in which the names and contact details

of officers, unconnected with a case would be relevant to the FOI request or advance the objectives of the FOI Act.

**2.8 *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 operate in a paperless office environment and information relating to our complaints investigation and review functions are captured electronically on our centralised information management systems.

In general, depending on the scope of the request and the volume of the relevant documents, we generally access records and use an automated redaction tool to remove the names and contact details of public servants in written documents.

However, we have received and processed a number of FOI requests that have involved many thousands of pages spread over a number of years. Given the nature of electronic communications, there may be instances where long email chains contain many signature blocks unrelated to a case, and this may require further resources. Furthermore, due to the aged nature of the requested information historical documents may only exist in paper format or are in a digital format that is not searchable so manual processing is required. Some of these records may also include communications from or passing between officers of other agencies, such as the ATO or the TPB, and consultation with them would be necessary before the information could be released.

FOI applicants to our office also typically seek access to the digital call recordings associated with their case. Where there is a need to redact public servants' personal information from telephone recordings, the task is significantly more resource intensive, requiring manual processing and specialised software only available to limited officers in our office.

Lastly, it is worth noting that our office does not have a dedicated FOI section or FOI officers. When an FOI request is received, an officer from our complaints service is taken from their core function to assist in processing the FOI request. Where our office's resources are diverted to address and manage requests involving large amounts of information and documents requiring consideration on the disclosure of officers' names and contact details (that do not have a specific and reasonable purpose), this significantly limits our ability to assist those taxpayers who are in genuine need of assistance.

---

**Closing remarks**

We trust that above submissions are helpful in your deliberations. As a scrutineer agency we strongly reaffirm our support for the open and transparent administration of government and the FOI Act where it fosters that outcome. We accept that in some instances, this may require consideration of the disclosure of APS employees' personal information. However, that should always be carefully balanced with the public servant's right to privacy, safety including WHS requirements as well as the efficient operations of the agencies making these decisions. It is for these reasons that we feel the OAIC's consultation is important and, once again, thank you for the opportunity to comment on the discussion paper.

13 August 2019

If you would like to discuss any of our comments above, please do not hesitate to contact our FOI and Privacy Officer, Duy Dam, on 02 8239 2108.

Yours sincerely,



Andrew McLoughlin  
Deputy Inspector-General of Taxation &  
Taxation Ombudsman



Duy Dam  
Director – Review and Engagement  
FOI and Privacy Officer