



AUSTRAC Input: OAIC Discussion paper 'Disclosure of public servants' names and contact details' July 2019

The following is AUSTRAC's response to correspondence received from the Office of the Australian Information Commissioner (OAIC) on 1 July 2019, inviting AUSTRAC to provide our views on a discussion paper titled Disclosure of public servants' names and contact details.

Question 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?

The Australian Transaction Reports and Analysis Centre (AUSTRAC) performs a dual role as Australia's regulator of anti-money laundering and counter-terrorism financing (AML/CTF) and financial intelligence unit. AUSTRAC's regulatory and financial intelligence functions are interconnected and complementary. This builds resilience in the financial system and uses financial intelligence and regulation to disrupt money laundering, terrorism financing and other serious crime.

In that context, AUSTRAC has concerns about the potential ramifications of identifying names and contact details of non-Senior Executive Service (SES) staff, and the contact details of SES staff (together referred to as "Staff Personal Information" throughout this document) in the course of responding to freedom of information (FOI) requests.

The reason AUSTRAC is not concerned about the release of SES staff names is because SES staff are already publicly identified in the agency structure document that AUSTRAC is required to publish under s 8(2)(b) of the *Freedom of Information Act 1982* (FOI Act).

AUSTRAC notes that once a document is released to an applicant in response to an FOI request, it is generally open to the applicant to deal with that document as they wish, which may include distributing it more widely or publicly. As a consequence, where Staff Personal Information is identified in those documents, it is possible for that information to be put into the public domain.

This may mean that the people who are the subject of AUSTRAC's financial intelligence reports get access to Staff Personal Information. AUSTRAC considers that there is a risk that these people could seek to contact staff if their details become readily available.

As an agency within the National Intelligence Community (NIC), AUSTRAC staff have access to highly sensitive and classified information and intelligence, including on matters related to foreign governments or entities. AUSTRAC is one of the few NIC agencies that is subject to FOI. There is a risk that AUSTRAC staff could be deliberately targeted by Foreign Intelligence Services or other actors to acquire this sensitive information, posing a risk not only for staff welfare, but government information. Similarly, AUSTRAC staff also have access to commercially sensitive information provided by its regulated entities. There is a risk staff could be targeted by actors seeking information that could be used to support insider trading or other financial crimes.

Additionally, AUSTRAC notes that it is legally obliged to provide a safe working environment, conducive to good physical and mental health. AUSTRAC considers that the release of Staff Personal Information, where that information may ultimately be put into the public domain, adversely affects its ability to discharge that obligation.

Question 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.

AUSTRAC's longstanding policy is to seek each FOI applicant's agreement to Staff Personal Information being deemed to be outside the scope of their application, and where that agreement is reached, to redact Staff Personal Information from any documents that are released to the applicant.

When an FOI request is received, AUSTRAC emails applicants an acknowledgement of their request. That email:

- advises the applicant that AUSTRAC's policy is to exclude Staff Personal Information from documents released in response to an FOI request on the basis that this information is outside the scope of the application;
- invites the applicant to advise AUSTRAC if they do seek Staff Personal Information; and
- notes to the applicant that if they do not give that advice, then they will be taken to have agreed to that information being deemed to be outside the scope of their application.

During the 2018-2019 financial year, AUSTRAC finalised over 500 FOI applications. During that period, no FOI applicant pressed for access to Staff Personal Information. To date, AUSTRAC's policy of redacting Staff Personal Information has not triggered any review applications or complaints.

AUSTRAC considers that this data supports the proposition that Staff Personal Information is generally outside the scope of an application, and indicates that applicants do not consider that Staff Personal Information is useful or necessary.

If requests for access to Staff Personal Information are pressed in the future, AUSTRAC will consider such applications on a case by case basis and make decisions consistent with the FOI Act and guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

Question 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?

AUSTRAC has an established FOI training module, which is one part of a broader induction program made available to staff commencing with the agency. This module details a range of information about AUSTRAC's obligations under the FOI Act. However, at present, AUSTRAC does not specifically advise agency staff or contractors that Staff Personal Information may be released in response to a FOI request.

This is due to the fact that AUSTRAC's policy is to seek each FOI applicant's agreement that Staff Personal Information is outside the scope of their application. If an applicant pressed an application for Staff Personal Information in line with the process set out in the response to question 2 above, AUSTRAC would advise the staff who may be affected.

Question 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?

AUSTRAC is committed to providing a safe workplace that is compliant with the *Work Health and Safety Act 2011* and all other applicable legislation. AUSTRAC's policy on the release of Staff Personal Information is a deliberate component of AUSTRAC's delivery of that commitment. This policy is consultative and does not negatively impact AUSTRAC's ability to efficiently and transparently deal with FOI requests consistently with the requirements and the spirit of the FOI Act.

Given the nature of AUSTRAC's work, AUSTRAC considers that release of Staff Personal Information would not advance the public interest or do anything to better achieve the objects set out in the FOI Act. Conversely, release of Staff Personal Information does bear the risks set out in the response to question one above. On that basis, AUSTRAC considers that its current policy on the release of Staff Personal Information strikes the right balance between protecting staff welfare and facilitating transparency.

Question 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 set out in the response to question two above, AUSTRAC's policy is to deem Staff Personal Information to be outside the scope of an FOI application unless an applicant advises that they seek that information. If an applicant did give that advice, AUSTRAC would consider that request on an individual basis.

This would include:

- determining if any statutory exemptions would apply;
- consideration of the nature of the document, the type of work the affected staff member was involved in and the potential for harm to arise in the circumstances;
- consultation with the relevant internal business area to obtain its views;
- consultation with AUSTRAC's Corporate Operations Group to identify any health and safety threats; and
- contacting the affected staff member(s) directly to obtain their views.

AUSTRAC would ultimately only apply an exemption to Staff Personal Information if it was consistent with FOI Act and the OAIC Guidelines.

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

AUSTRAC acknowledges that the OAIC Guidelines deal with issues relating to Staff Personal Information at Part 6. In particular, paragraphs 6.152 to 6.157 deal with "Information about agency employees included in documents because of their usual duties or responsibilities".

AUSTRAC considers the above part of the OAIC Guidelines does not provide adequate guidance about how Staff Personal Information should be treated in the context of an FOI application, including because:

- it conflates discussion about disclosure of names with discussion about disclosure of other categories of personal information (e.g. email address, position title, phone number), without regard to the different considerations that may arise for these different kinds of information when deciding whether such information should be released; and
- while suggesting that "special circumstances" may justify withholding Staff Personal Information, it does not set out any guidance on what may constitute special circumstances.

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

AUSTRAC's process for deeming Staff Personal Information to be outside the scope of an FOI application is set out in the response to question 2 above. However, AUSTRAC

acknowledges that from time to time specific or peculiar circumstances may arise where Staff Personal Information is relevant to a request. AUSTRAC's process allows for this possibility by leaving it open to applicants to press an application for Staff Personal Information. In those circumstances, if an applicant pressed for release of the information, AUSTRAC would consider that request according to the method set out in the response to question 5.

Question 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?

AUSTRAC recognises redaction of Staff Personal Information does increase the time taken to process an FOI request. The precise impact varies and is dependent on the volume of documents captured within the scope of a request and how many of those documents contain Staff Personal Information.