

Submission by the
Commonwealth and ACT Ombudsman

**Disclosure of public servants' names
and contact details**

Submission by the Commonwealth and ACT Ombudsman, Michael Manthorpe PSM

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Introduction and summary

The Office of the Commonwealth Ombudsman appreciates the opportunity to provide comments on the discussion paper entitled 'Disclosure of public servants' names and contact details', prepared by the Office of the Australian Information Commissioner (OAIC)¹.

We have provided comments below on the basis of:

- the experience of our Office, as the Commonwealth Ombudsman, when processing applications under the Commonwealth Freedom of Information (FOI) scheme
- our role as the independent oversight agency for Freedom of Information laws in the ACT.

We support OAIC's view, as reflected in its Information Commissioner's Guidelines (the Guidelines) that it is reasonable to disclose public servants' personal information under the *Freedom of Information Act 1982* (the FOI Act), unless special circumstances exist.

Experience of the Commonwealth Ombudsman

Background regarding our complaints-handling

One of the functions of the Ombudsman's office is to manage complaints from members of the public about public administration in Australian and ACT Government agencies, certain postal operators, private health insurance companies and private tertiary education providers.

To efficiently manage this complaints-handling function, the Ombudsman has established various intake and assessment teams which are responsible for taking telephone calls to centralised telephone numbers and answering correspondence received at generic email addresses.

Intake and assessment teams conduct a preliminary assessment of each complaint and determine the appropriate course of action. Staff consider whether the issues can be resolved through mechanisms such as transfer back to the body being complained about or by providing further information about the body's policies or procedures, or whether more in-depth investigation is required.

While some staff provide a full name, most complaints correspondence includes only the first name of relevant staff and provides the central phone number and general email address for contact.

Concerns regarding releasing the names and contact details of staff

Potential concerns about releasing staff names and contact details relate mainly to work health and safety considerations for individual staff members, and the efficient conduct of agency operations.

¹ <https://www.oaic.gov.au/engage-with-us/consultations/disclosure-of-public-servants-names-and-contact-details/discussion-paper/>

Work, health and safety considerations

Part of the role of our complaint management staff is to communicate with complainants about the outcome of our deliberations on the circumstances of their complaint. Where the outcome of our deliberations does not result in a different or better outcome for the complainant, we can experience complainants seeking to contact our staff further, with a number doing so repeatedly, even after their complaints have been closed, and they have been advised the Office is not able to provide any additional assistance to them.

It is not uncommon for complainants to transfer to our staff their dissatisfaction with the agency about which they are complaining, or to be unable to accept the outcome of our finalisation of their complaint. Sometimes this behaviour can occur over a sustained period of time after a complaint has been closed. This Office has, in the past, needed to inform the Police of threats directed by complainants to members of our staff.

Efficient conduct of agency operations

The release of direct contact details of staff may undermine our Office's efficient and effective engagement with the public and the ability of staff to undertake their assigned tasks in an efficient manner.

Approach taken by the Commonwealth Ombudsman

Our staff are aware their names and contact details may be released in response to an FOI request, and decisions made on FOI requests will need to take into account the individual circumstances of the case.

This is because while such details do contain personal information, such information would generally only reveal that the public servant was performing their duties, and may well already be publicly available, following contact with clients and/or office publications. As a result, disclosure would not generally be considered unreasonable. Regardless, as noted above, operational staff generally provide generic contact details when communicating with complainants.

Section 47E(d) relevantly provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to ...:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

This Office holds the view that use of generic contact details supports the ability of the Office to manage contact with members of the public and most efficiently direct complaints for further consideration and treatment. It assists the Office to manage its overall resources in response to demand and the efficient handling of the day to day responsibilities of individual officers.

Our Office considers that it may be in the public interest to apply such an exemption in support of the efficient operation of the agency, unless the responsible officer has previously had reason to provide their full name and direct contact details to the complainant. Given that our generic phone and email contact information is well publicised, the exemption of the surname and direct contact details of our staff does not affect the ability of members of the public to contact this Office.

The Commonwealth Ombudsman does, also, have a duty under the *Work Health and Safety Act 2011* (the WHS Act) to ensure, so far as is reasonably practicable, the health and safety of its employees. This includes providing a workplace which is free from harassment, including from members of the public.

As a result, consistent with OAIC's guidelines, regarding 'special circumstances', documents may be withheld from release or redacted, where disclosure is considered unreasonable and contrary to the public interest – for example, where it is considered that disclosure would expose staff to workplace health and safety risks that could result in possible psychological harm.

Section 47F relevantly provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

Section 47E(c) also provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to ...:

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency*

Our Office considers it may be in the public interest to apply such an exemption where there is prior conduct suggesting that disclosure of full names or direct contact details, would result in frequent, unannounced and unreasonable contact with members of the public. This would represent a workplace health and safety risk which has the potential to result in adverse health and safety outcomes for our staff.

This would include situations, as flagged in OAIC's guidelines, where an individual has a propensity to pursue matters obsessively and there is no need to contact a particular public servant in the future.

Redactions will also be considered where mobile or personal email/contact details are included as exemption of this information is unlikely to be unreasonable – given the more personal nature of such information.

Our Office's approach to this matter has changed over time reflecting changes in our organisational arrangements regarding complaints-management. Concerns around harassment have also increased given possible exposure of staff to unreasonable contact via social media where complainants or other stakeholders are aware of the full names of our staff.

Our view is the OAIC's guidelines sets out well the considerations to which a decision-maker should turn their minds. We consider that it could, however, be useful for agencies to be provided with more practical advice regarding examples of situations when 'special circumstances' may exist that would support personal information about a public servant being removed when performing their public duties.

We think it would also be useful for OAIC to address in more detail how such matters could potentially be managed via scoping discussions between an FOI applicant and an agency decision-maker. It is noted that in many cases the applicant potentially is not interested in the personal details of public servants, and would be prepared to agree to de-scope this information in order to facilitate quicker processing of their request.

Approach under the ACT FOI Scheme

While there are no exemptions available under the *ACT Freedom of Information Act 2016* (FOI Act), a relevant factor to be considered when applying the public interest test is that disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*.

The ACT Ombudsman's work as the independent review body under the FOI Act has, as well as our engagement with ACT agencies, highlighted different approaches by ACT agencies when applying this factor in the context of the personal information of public servants that appears in documents being considered for release. This has included removal of staff names and contact details simply due to the nature of their position (for example, for lower-level administration staff).

As you would be aware, the ACT Ombudsman is currently preparing draft FOI Ombudsman guidelines. Volume 3 and 4 of these guidelines, which focus on *Dealing with Access Applications* and the *Public Interest Considerations*, respectively, are currently being drafted.

We will be seeking to use these guidelines to promote and improve consistency among ACT FOI decisions in relation to this issue.

While the final content of the guidelines will be dependent on consultations with the ACT Government and other stakeholders, it is anticipated these guidelines will reflect the Ombudsman's view that generally, the disclosure of information about agency or Ministerial staff will **not** be considered to prejudice the protection of the individual's right to privacy where the information is wholly related to the individual's routine day-to-day work activities.²

This is because the information will only reveal that the individual is performing their work duties, and such disclosure is considered to contribute to accountability and transparency of government actions and decision-making.

For disclosure of public servant names to be withheld on privacy grounds in the ACT, the Ombudsman considers that:

- the information would need to be **not** wholly related to routine day-to-day work activities – for example, information about:
 - workplace complaints or investigations
 - recruitment processes or performance reviews
 - reasonable personal use of staff emails, devices or ICT resources
 - reasons for personal leave
 - job applications and/or resumes

² This is consistent with the ACT Ombudsman's approach in the review matter of *'AE' and Health Directorate* [2018] ACTOFOI 9 at [49]-[51] and *Dentsu X and Chief Minister, Treasury and Economic Development Directorate* [2019] ACTOFOI 7 at [38].

- or there needs to be some additional reasons or **special circumstances** – for example, where disclosure could:
 - affect the personal safety of officers
 - lead to harassment or intimidation of officers
 - cause detriment to the family members of an officer
 - result in officers being targeted for abuse on the internet

We will share copies of these draft guidelines with OAIC once the formal consultation process commences in September/October 2019.