



Australian Government
Department of Finance

Disclosure of public servants' names and contact details – Discussion paper

Thank you for providing the opportunity to make a submissions to the Office of the Australian Information Commissioner (OAIC) in relation to the Discussion Paper *Disclosure of public servants' names and contact details*.

You have specifically invited FOI practitioners to comment on our experiences and posed a series of questions to explore the issues.

As noted in the background and annexures to the Discussion Paper, there are a number of cases that have considered these issues, with a range of outcomes that, in our view, reflect the complexity of relevant circumstances. The OAIC's view, as expressed in the FOI Guidelines, is that it would not be unreasonable to disclose public servants' personal information unless special circumstances exist:

6.153 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.

These principles are sound and reflect the case law. The pragmatic issue in practice is determining whether special circumstances exist. In many cases, the only way to make that assessment is to seek further information, for example by asking or consulting, either formally or informally under the consultation provisions under the FOI Act. This can be time consuming and cause frustrations to both the applicant and staff.

It is our experience that where applicants make requests for documents, they are often seeking the substantial content of the document and are not focused on who authored the document and more generally the names of public servants in the documents.

Finance believes that a pragmatic and practical solution is to ask the applicants if they want this information or not. When acknowledging receipt of all FOI requests, Finance advises FOI applicants that it has a policy that unless applicants object, junior officer (non-SES) names and contact details will be redacted from relevant documents under section 22 of the FOI Act as irrelevant to the request. This policy covers the names and contact details of Finance staff (non-SES officers) and staff employed under the *Members of Parliament (Staff) Act 1984* (adviser level and below). Where there is no objection from FOI applicants, the names and contact details of junior officers are redacted from any documents released pursuant to the request.

In notifying applicants of our default position to treat names and contact details as irrelevant unless otherwise objected to, Finance decision makers are able to process requests without turning their minds to the potential disclosure of names of staff, and any adverse effects disclosure may have.

We note that these practices were, in part, considered in the decisions of:

- *'FM' and Department of Foreign Affairs and Trade* [2015] AICmr 31 (24 April 2015) (FM) at paragraphs [14]–[15] and
- *'PO' and Australian Federal Police (Freedom of information)* [2018] AICmr 72 (19 December 2018) at paragraphs [16]–[17].

In particular in FM, at paragraphs 14-15, the Commissioner indicated:

- 14. An apparent trend in FOI administration by Australian Government agencies that partially explains this increased use of s 22 is the deletion of names of government officials below the Senior Executive Service (SES) rank as irrelevant to the scope of an FOI request. Many of the s 22 deletions in this case are of that kind. There is no apparent logical basis for treating the names of SES officials as being within the scope of a request but of other officials as being irrelevant to the request. Nor, as I have noted in the Guidelines, will the disclosure of the name of an official performing their public duties usually be regarded as an unreasonable disclosure of personal information under s 47F.*
- 15. Generally, it is questionable whether s 22(1)(a)(ii) is being applied appropriately in this and like cases. The implicit purpose of s 22 is to facilitate efficient FOI processing through the deletion from requested documents of material that can readily be deleted (s 22(1)(c)) and that an applicant has either agreed or is likely to agree is irrelevant (s 22(1)(d)). This aligns with the objective of the FOI Act of facilitating access to information 'promptly and at the lowest reasonable cost' (s 3(4)). There is cause for concern that s 22 is not being administered with those principles in mind and that s 22 deletions are becoming an unnecessary distraction in FOI processing and review.*

Finance submits that providing the applicant with the opportunity to accept or object to the policy is consistent with the objectives of the FOI Act. In our view, the practice adopted by Finance promotes the objects of the FOI Act by encouraging disclosure of documents without the need to consider possible exemptions that may otherwise apply and allows applications to be processed as efficiently as possible.

The vast majority of applicants readily accept that we will redact non-SES staff names. In the very few instances where applicants seek the names and/or contact details of staff associated with documents (less than 10 cases out of over 400 in the last 3 years), Finance decision makers turn their mind to each name on a case-by-case basis. Consistent with the objects of the FOI Act, case law and the FOI Guidelines, where staff are known to be associated with the documents sought, Finance does not redact their names.

Where staff are not known to be associated with documents sought, but names are sought by the applicant, decision makers consider work, health and safety concerns against the objects of the FOI Act, including by promoting disclosure of documents. It may be appropriate to consult, either formally or informally, with those third parties (or staff) to determine whether special circumstances exist that the decision maker should consider.

Depending on the functions of staff or business areas, there may be some limited circumstances where the decision maker forms the view that disclosure would have an adverse effect on the functions of Finance.

These are usually associated with functions in the department that involve parties who are seeking discretionary payments, including acts of grace and debt waiver applications. These areas have policies and procedures that direct applicants through a central mailbox (email and phone). This allows the efficient processing of applications for discretionary payments. Disclosure of individual case officers and their contact details would potentially impact on the operations of these functions of our Agency. As noted above, where those officers are already known to applicants, this information will be released. In fact in most cases any FOI applications lodged by parties who are seeking access to their 'claim file' will be provided to them outside the FOI Act under administrative access arrangements.

An appropriate balance between the objectives of the FOI Act and the safety and wellbeing of our staff and efficiency of discharging our legislative obligations and functions needs to be met.

We also note that these type claims files, while being released in full to the FOI Applicant, would not be published on our FOI Disclosure Log as they relate to individual cases. This means, in practice, we do not have to make a decision regarding redaction of public servant names and contact details for the purposes of publication on the FOI Disclosure Log. In our view, this would be a reasonable practice for delegates to consider to limit any potential harm that could arise due to publication.

The distinction made in some decisions, for example '*BB*' and *Department of Human Services* [2014] AICmr 11, to release names but not contact details, including email addresses, can be problematic in its application. In particular, releasing someone's full name means that email addresses can easily be determined, given the formulaic nature of departmental email addresses.

SES officers

The decision of FM, at paragraph 14 also made comments regarding SES officials, *[t]here is no apparent logical basis for treating the names of SES officials as being within the scope of a request but of other officials as being irrelevant to the request.*

Finance's policy is to release information in relation to SES-level officers. On a practical approach names and contact details of SES officials are publicly available on the Government Directory (directory.gov.au). On that basis, Finance has formed the view that disclosure would not be unreasonable, nor would it have an adverse effect on operations. Finance has formed the same view when considering whether the names of staff employed under the *Members of Parliament (Staff) Act 1984* should be redacted.

In summary, in the limited instances where FOI applicants specifically seek names/contact details of staff, in considering whether disclosure would have an adverse effect on staff, decision makers consider the nature of the documents, the relevance of the staff names to the documents sought or request lodged, and the effects disclosure would have. Finance believes that each matter should be considered on its own merits. This includes in instances where disclosure of names may lead to harassment from complainants or other applicants with regards to functions of Finance and/or where disclosure may cause harm or

detriment to individuals. In our view, Finance has struck the right balance, including with FOI applicants, to balance the resources that would be required to allow a decision maker to make an informed decision regarding these matters on the one hand, and on the other encouraging disclosure of documents without the need to consider possible exemptions that may otherwise apply, thereby allowing efficient processing of FOI applications.

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