Your Freedom of Information request FOIREQ

Dear ,

I refer to your request for access to documents made under the Freedom of Information Act 1982 (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on [insert].

In your request you seek access to the following:

insert.

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have identified [insert] documents within the scope of your request. I have decided to grant you access to the documents in full.

A schedule describing the documents and the access decision I have made is at Appendix A to this decision.

Yours sincerely,

19 May 2020

[INSERT REVIEW RIGHTS]
Dear [First Name],

I refer to your request for access to documents made under the Freedom of Information Act 1982 (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on [date of request].

In your request you seek access to the following:

[Scope of request]

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have identified [XXX] documents within the scope of your request. I have decided to [decision to refuse/defer/grant in part access to which documents and under what sections of the FOI Act].

A schedule describing the documents and the access decisions I have made is at Appendix A to this decision.

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

• your freedom of information request dated [XXXXXX]

• the FOI Act, in particular sections [XXXXXXX]
• the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), specifically paragraphs [XXXXXXXXX]

• [any other relevant material]

Section [XXXXX]

[Reasons for decision]

Please see the following page for information about your review rights and information the OAIC's disclosure log.

Yours sincerely,

[First Name Last Name]
[Position Title]

19 May 2020
[INSERT REVIEW RIGHTS]
Hi Amanda,

Could you please a new entry on our disclosure log? The documents need to be published no later than XX under the FOI Act. I have updated the spreadsheet with the relevant details: D2018/014405.

Please note that the applicant is a journalist, therefore please hold off publishing the documents until close to the end of the ten day period.

Many thanks.

Kind regards
Caitlin Emery
Dear [First Name],

I refer to your request for access to documents made under the Freedom of Information Act 1982 (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on [date of request].

In your request you seek access to the following:

[Scope of request]

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your requests no later than 30 days after the day we receive them. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

However, this time will be stopped until we have completed this consultation with you regarding the scope of your request.

Notice of intention to refuse your request

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to freedom of information requests.

I am writing to tell you that I believe that the work involved in processing your request in its current form will substantially and unreasonably divert the resources of the OAIC from its other operations due to its [size and scope]. This is called a ‘practical refusal reason’ (under s 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you have requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This
is called a ‘request consultation process’ as set out under s 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out at the end of this letter.

Why I intend to refuse your request

[e.g. Calculating the processing time]

[Reasons for decision]

[e.g. Diversion of resources]

[Reasons for decision]

Request consultation process

You now have an opportunity to revise your request to enable it to proceed. Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, we will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice. Therefore, you must respond to this notice by [XXXXXX].

During this period, you can ask the contact person (see below) for help to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.
Ways you can reduce the scope of your request

[Make suggestions as appropriate]

Contact officer

If you would like to revise your request, or have any questions, you can contact me at [email address] or on [telephone number].

Yours sincerely,

[First Name Last Name]
[Position Title]

19 May 2020
Section 47E(d) – where IT network address is found within FOI documents

Material taken into account

In making my decision, I have had regard to the following:

• your Freedom of Information request
• the documents at issue
• the FOI Act, in particular ss 11A, 22 and 47E(d)
• the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (the FOI Guidelines), in particular [3.95] — [3.100], [6.7] – [6.27] and [6.120 – 6.123]
• relevant case law, in particular Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority [2014] AATA 707 and ‘AW’ and Australian Taxation Office (Freedom of information) [2014] AICmr 1.

Substantial adverse effect on the operations of an agency (s 47E(d))

OAIC’s network address

I have decided that part of page 2 of the document is conditionally exempt from disclosure under s 47E(d) of the FOI Act. The relevant material that I have found to be conditionally exempt is the network address for the OAIC’s IT system.

As discussed in the FOI Guidelines and in IC review cases, for a document to be conditionally exempt under s 47E(d) of the FOI Act, it needs to be shown that disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.¹

The FOI Guidelines at [6.101] and [6.103] explain:

For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term ‘could reasonably be expected’ is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

... An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the

decision maker’s statement of reasons, if they can be included without disclosing exempt material (s 26, see Part 3).

The FOI guidelines explain that ‘substantial adverse effect’ means that the expected effect needs to be both ‘substantial’ and ‘adverse’. The term ‘substantial adverse effect’ broadly means ‘an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person’.

In the Administrative Appeals Tribunal (AAT) case of Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority [2014] AATA 707, Deputy President Forgie discussed that for a claim under s 47E(d) to succeed, the substantial adverse effect that would, or could reasonably be expected to, occur must be on the ‘proper and efficient conduct of the operations of an agency’. Deputy President Forgie explains that the ‘ordinary meanings of the word “operation” in this context’ includes ‘an act, method or process of working or operating’.2

In the Information Commissioner review (IC review) case of ‘AW’ and Australian Taxation Office (Freedom of information) [2014] AICmr 1 (‘AW’), the then Freedom of Information Commissioner considered the decision by the Australian Taxation Office (ATO) to exempt user IDs under s 47E(d) of the FOI Act. The user IDs are used by ATO staff to access the ATO’s IT system. The Commissioner found that disclosing the user IDs ‘would have an adverse effect on the security of the ATO’s IT systems, and could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the ATO’.3

In a series of subsequent IC review decisions, the former Australian Information Commissioner agreed with the reasoning given by the Commissioner in ‘AW’ to find that user IDs used by ATO staff to access the ATO’s IT system are exempt under s 47E(d).4

In deciding whether disclosure of the network address of the OAIC’s IT system, would or could reasonably be expected to, have a substantial adverse effect on the operation of the OAIC, I have had regard to the OAIC’s functions and responsibilities.

The OAIC collects and stores a range of personal and financial information about members of the public. The network address contains information about the OAIC’s IT system (including the network location and storage of information). I consider that disclosure of this information could compromise the safety and security of the storage of the information held by the OAIC. The impact of any compromise to the safety and security of the OAIC’s information systems would result in a serious adverse impact on the functions and responsibilities of the OAIC.

I consider that the disclosure of the network address of the OAIC’s computer system could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the OAIC’s operations.

I have decided that the network address of the OAIC’s IT system on page 2 is conditionally exempt from disclosure under s 47E(d) of the FOI Act.

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2 Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority [2014] AATA 707 [119].

3 ‘AW’ and Australian Taxation Office (Freedom of information) [2014] AICmr 1 [21].

The public interest (s 11A(5))

I have found that parts of page 2 are conditionally exempt under s 47E(d).

An agency cannot refuse access to a conditionally exempt document unless giving access would, on balance, be contrary to the public interest (s 11A(5)).

Section 11B(3) of the FOI Act lists four factors which favour disclosure. The public interest factor favouring disclosure in this case is that disclosure would promote the objects of the FOI Act.

Against these factors I must balance the factors against disclosure. The FOI Act does not specify any factors against disclosure, however the FOI Guidelines provide a non-exhaustive list of factors against disclosure. This includes factors such as when disclosure could;

- reasonably be expected to have an adverse effect on the safety and security of the OAIC’s IT system.
- reasonably be expected to prejudice the privacy rights of members of the public. If the OAIC’s network address is disclosed this may expose the personal information of members of the public who make privacy complaints to the OAIC to unauthorised access, modification and disclosure.
- reasonably be expected to harm the interests of an individual or group of individuals.

On balance, I consider that the factors against disclosure outweigh the factor in favour of disclosure. I have therefore decided that it would be contrary to the public interest to give you access to the information that I have found to be conditionally exempt under s 47E(d) of the FOI Act.
Section 37 - reasons

Reasons for decision

Material taken into account

- your freedom of information request of XX
- the documents at issue
- the FOI Act, particular at ss 11A(5) and 37
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (the FOI Guidelines), in particular paragraphs [5.79]-[5.90].

Investigation of a breach of law – s 37(1)(a)

Under s 37(1)(a) of the FOI Act, a document is exempt if its disclosure would, or could reasonably be expected to, prejudice the conduct of a current investigation.

Section 37(1)(a) of the FOI Act states:

37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;

The FOI Guidelines at [5.86] provides:

Section 37(1)(a) applies to documents only where there is a current or pending investigation and release of the document would, or could reasonably be expected to, prejudice the conduct of that investigation. Because of the phrase ‘in a particular instance’, it is not sufficient that prejudice will occur to other or future investigations: it must relate to the particular investigation at hand. In other words, the exemption does not apply if the prejudice is about investigations in general.
Additionally, at [5.87] the FOI Guidelines further explains:

The exemption is concerned with the conduct of an investigation. For example, it would apply where disclosure would forewarn the applicant about the direction of the investigation, as well as the evidence and resources available to the investigating body — putting the investigation in jeopardy. The section will not apply if the investigation is closed or if it is being conducted by an overseas agency.

In order to determine whether disclosure of the documents would, or could reasonably be expected to prejudice the conduct of a current investigation, the FOI Guidelines at [5.16]-[5.17] notes:

The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

Under s 40 of the Privacy Act 1988 (Cth) (the Privacy Act), the Information Commissioner has the power to investigate privacy complaints made to her office. These investigations are concerned with ascertaining whether there has been an interference with an individual’s privacy, as a result of a s 36 complaint being made to the Information Commissioner. The documents at issue pertain to s 40 investigations that are currently on foot. The relevant case officer is in the process of investigating the complaints, and the outcome of the complaints has not yet been determined. Releasing the documents at issue, will have the effect of circumventing the current s 40 investigations.

Notably the OAIC’s Guide to Privacy Regulatory Action (the Guide) at paragraphs [1.31]-[1.33] creates an expectation that the OAIC will hold information pertaining to a privacy complaint in confidence. The Guide at paragraph [1.31] provides:

The OAIC is bound by the APPs when handling complaint related personal information, and manages complaints confidentially. As such, the OAIC does not disclose the particulars of a complaint during the complaint handling process to persons other than the parties to a complaint or third parties with information relevant to the inquiry that can assist the inquiry. This is to ensure that parties will participate fully and frankly in the complaint process.

If the documents at issue were disclosed during the complaints process, contrary to the parties’ expectation of confidentiality, it is likely that the parties will be less likely to participate fully and frankly in the complaints process.

During the investigation of a privacy complaint, the OAIC seeks to conciliate the complaint with the relevant parties. Under s 40A of the Privacy Act, the OAIC must undertake conciliation process with the parties. Relevantly, the Guide at paragraph 1.33 states:
In addition, conciliation, where that is occurring, works best in an atmosphere where parties can raise issues in a frank way without fear of the information being disseminated further and the OAIC encourages parties not to disseminate information while involved in the conciliation process.

As such, if participants are less likely to actively participate in the complaints process, the conciliation process will be prejudiced. Ultimately circumventing the investigation and conciliation process.

Furthermore, I consider that disclosure of the documents would prejudice the current investigations if preliminary material were disclosed, before an investigation has been finalised. I consider it likely that the documents and the parties involved, will be subject to scrutiny over matters which have not been thoroughly investigated. It is likely that as a result, the relevant parties would be discouraged from actively participating in the current investigation.

In order to effectively conduct investigations under s 40 of the Privacy Act, it is necessary for the OAIC to openly engage with the parties subject to the inquiry. Open engagement is imperative during an investigation as the OAIC relies upon the candour and frankness of the relevant entity to provide pertinent information that will inform the OAIC’s view. As such, the OAIC’s ability to work with parties to elicit information, imperative to the investigation, will be adversely affected by the disclosure of the document.

Accordingly, I have decided that the documents at issue are exempt under s 37 of the FOI Act. I consider that disclosure would, or could reasonably be expected to, prejudice the conduct of the current s 40 of the Privacy Act, investigations.
Sample schedule of documents

Note on schedule

This table summarises the recommended elements for a schedule of documents as part of an access decision under the Freedom of Information Act 1982. A schedule of documents is not a specific requirement of the FOI Act but it is good practice for larger requests where a schedule would aid comprehension of the section 26 statement of reasons. Agencies should adapt this sample to suit their record keeping approaches.

In addition to the categories of information below, decision makers may also wish to record, for their own purposes, details of where a document is located, such as the file name or number, the folio number or whether it is an electronic or hardcopy record. This may assist later work on the request, such as internal review, where a new decision maker must revisit documents and review an earlier decision.

Schedule of documents – Freedom of information request no. [insert unique number/code]

<table>
<thead>
<tr>
<th>Document no.</th>
<th>Page no.</th>
<th>Date</th>
<th>No. of pages</th>
<th>Description</th>
<th>Decision on access</th>
<th>Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Describe the nature of the document and provide details of the author and/or addressee (where applicable).</td>
<td>State whether the document is being: • released in full • released with deletions on the basis of one or more specific exemptions (including deletion of irrelevant matter under s 22) • access is refused on the basis of one or more specific exemptions • access is being deferred • access is being granted in a different form from that requested</td>
<td>State exemption and (if applicable) where exemption is claimed on document (for example which page; if there is more than one exemption claimed on a single page, provide further detail such as paragraph or line number. Alternatively you may choose to annotate the document with the exemption number next to each redaction.)</td>
</tr>
</tbody>
</table>

1 |          |      |              |             |                   |          |
Delaney Smith

Subject: FOIREQ18/XXXXX - Consultation about a freedom of information request received by the OAIC - Response by XX.08.2018

Dear XX

Freedom of information request and opportunity to make submission

I am writing to inform you that the Office of the Australian Information Commissioner (OAIC) has received a freedom of information (FOI) request, which includes a document containing business and personal information relating to

The relevant document is attached.

Under the Freedom of Information Act 1982 (FOI Act), when we receive a request covering documents of this kind and we believe the person or organisation concerned may wish to contend that the documents are exempt from release, we are required to consult before releasing the documents, if it is reasonably practicable to do so (under ss 27 and 27A of the FOI Act).

Opportunity to make a submission

I invite you to make submissions raising any objections you may have to the release of the attached document under the following exemptions in the FOI Act (paraphrased):

1. Section 47(1) – disclosure of the document would disclose:
   a) trade secrets or
   b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

2. Section 47G(1) – disclosure of the document would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
   a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs, or
   b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

3. Section 47F – disclosure would involve the unreasonable disclosure of personal information of any person (including a deceased person). This exemption is intended to protect the personal privacy of individuals.

We note that more information:


If section 47(1) applies, documents are fully exempt from release. Access must be given to documents covered by a conditional exemption under s 47F or 47G unless this would be contrary to the public interest. If you consider that the document falls within the scope of ss 47F or 47G(1) you must also indicate whether you believe that disclosure would be contrary to the public interest.
If it is your view that the document falls within the scope of the exemptions outlined above, would you please consider whether deletion of any specific information from the document (under section 22) would address your objections.

Please note that it is not sufficient simply to assert that one of the exemptions applies and that disclosure would be contrary to the public interest. You need to provide reasons and supporting evidence. Also, while your comments will be taken into account, the final decision about whether to release the document rests with the decision maker in our agency. If the decision maker decides to grant access to any document whose release you opposed and you have made a submission in support of your contention that the document is exempt under one of the provisions of the FOI Act above, you will be given written notice of the decision and the opportunity to seek review of the decision before the document is released.

Disclosure log

If we decide to grant access to the requested document we are generally obliged to publish the information on our disclosure log.

How to make your submission

Please send your comments in writing by close of business on XX August 2018 by return email to me. Please use OAIC reference FOIREQ18/00086 in all correspondence.

If a response is not received by this date, I will assume you do not object to the release of the document.

If you have any questions, please feel free to contact me.

Regards
Delaney Smith

Subject: FOIREQ18/XXXXX - Informal consultation about an FOI request received by the OAIC - Response by cob XX please

Our reference: FOIREQ18/XXXXX

Dear FOI contact officer

The OAIC has received a request under the Freedom of Information Act 1982 (the FOI Act) for access to documents.

I have identified XX documents within the scope of the request in the possession of the OAIC that contain material concerning your functions:

- 

A copy of the documents is attached. Can you please examine them and comment on their release under the FOI Act?

If you consider the consultation documents should be fully or partially exempt from release, I would be grateful if you could advise the section or sections of the FOI Act that you consider apply. I would also be grateful if you could provide reasons to support the exemption claim.

I would appreciate your response by close of business on XX.

Thank you in advance for your assistance with this matter.

Kind regards
Subject: FOIREQ18/XXXXX - Request for extension of time (2 weeks) [SEC=UNCLASSIFIED]

Dear XX

[Background to request and current due date].

I seek your approval, under s 15AA of the Freedom of Information Act 1982, to extend the time to process your request for another two weeks (until XX, to allow time for XX).

I would be grateful if you could respond by XX.

Regards
Delaney Smith

Subject: FOIREQ18/XXXXX - Request for searches to be undertaken by XX
Attachments: FOI_template_schedule_documents.rtf

Dear XX

I am writing about an FOI request we received yesterday from <name>. I am writing to you to ask that you search for documents within scope of the request that you may hold.

XX seeks access to:

[Insert details of any narrowing of scope]

To process this request can you please complete the following tasks by XX:

- Search for relevant documents (including in Resolve, Outlook, in your cabinets and any other place you may have documents)
- Save any documents you consider relevant (as PDF if possible) – if you are unsure whether the document is relevant include the document and we can consider its relevancy at a later stage
- Fill in columns 1 and 3 – 5 of the attached schedule of documents
- Provide feedback in relation to any sensitive information contained within the documents (for example information received in confidence, information that would affect OAIC operations, third party information). This information can be noted in column 6 of the schedule of documents in red.

When I receive the documents and your feedback I will consider my FOI decision. I will give you an opportunity to comment on my proposed FOI decision.

Thanks (in advance) for your help. If you have any questions about processing an FOI request, or this particular matter, please let me know.

Kind regards
Delaney Smith

Subject: FOIREQ18/XXXX - Seeking agreement to transfer FOI request - Response by XX please [SEC=UNCLASSIFIED]

Dear XX

Today the Office of the Australian Information Commissioner (OAIC) received a freedom of information request from XX seeking access to documents related to his service records (attached).

Section 16(1)(b) of the Freedom of Information Act 1982 (FOI Act) allows an agency to transfer all or part of a request to another agency if the subject matter of the documents is more closely connected with the functions of the other agency than with those of the agency to which the request is made. However transfer is subject to agreement by the other agency.

The purpose of my email is to seek your agreement to accept transfer of this request.

Can you please let me know by close of business on XX, XX whether you agree to accept transfer of this request?

Please call me if you have any questions.

Regards
Delaney Smith

Subject: FOIREQ18/XXXXX - Your freedom of information request [SEC=UNCLASSIFIED]

Our reference: FOIREQ18/XXXXX

Dear XX

Freedom of information request no. FOIREQ18/XXXXX

I refer to your request made under the Freedom of Information Act 1982 (Cth) (FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on XX.

Because your request covers documents which contain information concerning an organisation’s business or professional affairs and personal information, the OAIC is required to consult the individuals and organisations under ss 27 and 27A of the FOI Act before making a decision on release of the documents.

For this reason, the period for processing your request has been extended by 30 days to allow time to consult (see s 15(6) of the FOI Act). The processing period for your request will now end on XX, XX.

The consultation mechanisms under ss 27 and 27A apply when we believe the person or organisation concerned may wish to contend that the requested documents are exempt for reasons of personal privacy, or may adversely affect their business or financial affairs. We will take into account any comments we receive but the final decision about whether to grant you access to the documents you requested rests with the office of the OAIC.

At this time we do not have your permission to release your name to any person or business we consult. Please advise if you consent to your name being disclosed during consultation.

Regards
Delaney Smith

Subject: FOIREQ18/XXXX - Your FOI request

Our reference: FOIREQ18/XXXX

Dear XX

Transfer of your freedom of information request to XX

I refer to the freedom of information request received by the Office of the Australian Information Commissioner (OAIC) on XX (attached).

I am writing to tell you that I have transferred your request to the XX under s 16(1)(b) of the Freedom of Information Act 1982. Under this section I can transfer a request, or part of a request, if the documents requested are more closely connected to the functions of any other agency than those of the OAIC.

The OAIC does not hold documents relating to XX. It seems likely that the documents you have requested are in the possession of XX.

We received your request on XX, and the 30 day statutory period for processing your request commenced from the day after that date. XX will treat your request as if they received it on the same day we did. You should therefore expect a decision by XX. The period of 30 days may be extended if consultation with third parties is needed or for other reasons. They will advise you if this happens.

If you have any questions, please contact me.

Regards
Delaney Smith

Subject: FOIREQ18/XXXX - Your freedom of information request

Our reference: FOIREQ18/XXXX

Dear XX

Freedom of Information request

I refer to your request for access to documents made under the Freedom of Information Act 1982 (Cth) (the FOI Act) and received by the Office of the Australian Information Commissioner (OAIC) on XX.

Scope of your request

In your email you seek access to the following:

XX

In order to process your request as efficiently as possible, I will exclude duplicates and early parts of email streams that are captured in later email streams from the scope of this request, unless you advise me otherwise.

Timeframes for dealing with your request

Section 15 of the FOI Act requires this office to process your request no later than 30 days after the day we receive it. However, section 15(6) of the FOI Act allows us a further 30 days in situations where we need to consult with third parties about certain information, such as business documents or documents affecting their personal privacy.

As we received your request on XX, we must process your request by XX, XX.

Disclosure Log

Documents released under the FOI Act may be published online on our disclosure log, unless they contain personal or business information that would be unreasonable to publish.

If you would like to discuss this matter please contact me on my contact details set out below.

Regards
Dear XX

I refer to your email of XX.

I acknowledge receipt of your application for internal review of the OAIC’s FOI decision of XX 2018.

Section 54C of the *Freedom of Information Act 1982* (Cth) requires this office to make a fresh decision within 30 days after the day we received your application.

Because we received your application on XX, we must make a fresh decision by XX, XX.

Your application will be allocated to a review officer with no previous involvement with the earlier decision.

If you have any questions, please contact me.

Regards
Dear XX

Thank you for your email of XX.

The Office of the Australian Information Commissioner

Please be advised that this office, the Office of the Australian Information Commissioner (the OAIC), does not hold records on behalf of other government agencies such as XX.

The OAIC regulates the Privacy Act 1988 (Cth) (the Privacy Act) and the Freedom of Information Act 1982 (Cth) (the FOI Act). The office has the power to investigate complaints about the alleged mishandling of personal information by Australian government agencies and many private sector organisations, as well as the power to review FOI decisions of Australian government agencies. We are also responsible for handling privacy complaints about ACT public sector agencies.

If you wish to apply for access to documents held by an Australian government agency, then you need to make a request in writing, under the FOI Act, directly to the agency that holds the records. Further information about making an FOI application, including details of what needs to be included, is available on our website in the published FOI Fact Sheet 6 - How to Apply.

XX’s website provides information about making a request under the FOI Act to that agency: XX

Next steps

I would be grateful if you could confirm, by return email, whether you withdraw your request to the OAIC by XX, XX.

If you have any questions, please contact me at the details below.

Regards
Your review rights

If you disagree with my internal review decision, you may request a review by the Information Commissioner.

However, where it is in the interests of the administration of the FOI Act to do so, the Information Commissioner can refer requests for review directly to the Administrative Appeals Tribunal (AAT).

It is the Information Commissioner’s view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Once the Information Commissioner has made that decision, you will be able to apply to the AAT. You cannot go directly to the AAT after receiving this notice decision; you must first make an application for IC review. Information about requesting an IC review is available on the OAIC website on the Requesting a review page.

If you are not satisfied with the way we have handled your FOI request, you can complain to us by email enquiries@oaic.gov.au or by using the other ways to contact us published on the OAIC website. You can also complain to the Commonwealth Ombudsman. Information about how to do this is available on the Ombudsman website.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

I have noted your submissions, however, I do not consider that the document contains business information that it would be unreasonable to publish. As a result, this document will be published on our disclosure log shortly after it is released to the FOI applicant.
If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 30 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner’s view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the AAT, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the AAT for review of an FOI decision, you must first have applied for IC review.

Applications for internal review or IC review can be submitted to:

    Office of the Australian Information Commissioner
    GPO Box 5218
    SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.
Accessing your information

If you would like access to the information that we hold about you, please contact FOIDR@oaic.gov.au. More information is available on the Access our information page on our website.

Disclosure log

Section 11C of the FOI Act requires agencies to publish online documents released to members of the public within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

I do not consider that the document contains business information that it would be unreasonable to publish. As a result, this document will be published on our disclosure log shortly after it is released to the FOI applicant.
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Further Review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Appeals Tribunal (AAT).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

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Disclosure log

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The documents I have decided to release to you contain personal information that would be unreasonable to publish. As a result, the documents will not be published on our disclosure log.

OR

The documents will be published on our disclosure log shortly after their release to you. However, the documents contain certain personal information that would be unreasonable to publish (names and contact details of XX staff) and I have decided to delete this information from the documents before they are published on the OAIC’s disclosure log.

OR

The documents I have decided to release to you do not contain business or personal information that would be unreasonable to publish. As a result, the documents will be published on our disclosure log shortly after being released to you.
If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Further Review

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You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

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The documents will be published on our disclosure log shortly after their release to you. However, the documents contain certain personal information that would be unreasonable to publish (names and contact details of XX staff) and I have decided to delete this information from the documents before they are published on the OAIC’s disclosure log.

OR

The documents I have decided to release to you do not contain business or personal information that would be unreasonable to publish. As a result, the documents will be published on our disclosure log shortly after being released to you.
Our reference: [Insert reference number]

[First Name Last Name]

[Company Name]
[Address Line 1]
[Address Line 2]

Freedom of Information request FOIREQ[XX/XXXXX]

Dear [First Name],

I am writing to inform you of my decision in response to a request for access to documents, made under the Freedom of Information Act 1982 (Cth) (the FOI Act), which includes [reason/s for consulting].

Background

On [XXXX], I wrote to you to advise that the OAIC has received an FOI request, from [name of applicant if consent has been given for release], which includes documents containing [reason/s for consulting].

I asked for submissions to be made if you thought that the document was exempt under section [section/s consulted under] of the FOI Act.

On [XXXXX], you responded outlining your objections to release of the document under section [XXXX] of the FOI Act.

Decision

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I have considered your submissions and I have decided that [insert decision and basis].

[I enclose a marked-up version of the documents showing which exemptions I have decided that apply to the information I consulted with you about. I have also included a version of the documents with those redactions ‘applied’ to show, clearly, the information I consulted with you that will be released in accordance with my decision.]

My reasons for finding that [parts of] the relevant material is not exempt under [insert section/s as appropriate] is set out below.
Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

• the documents at issue
• the FOI Act, in particular sections [XXXXXX]
• the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the FOI Guidelines), specifically paragraphs [XXXXXXXX]
• your submissions of [XXXXX]
• [any other relevant material]

Section [XXXXX]

[Reasons for decision]

Please see the following page for information about your review rights and information about the OAIC’s disclosure log.

Yours sincerely,

[First Name Last Name]
[Position Title]

19 May 2020