



Our reference: FOIREQ15/00002

Mr Paul Farrell  
The Guardian  
By email: [paul.farrell@theguardian.com](mailto:paul.farrell@theguardian.com)

Dear Mr Farrell

## Outcome of your Freedom of Information request

I refer to your request for access to information under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

### Summary

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

On 28 January 2015, you requested access to:

All referrals from the Department of Immigration and Border Protection to the Office of the Australian Information Commissioner notifying them of a suspected data breach or other breach under the IPPs or APPs.

The decision was due to be provided to you on 27 February 2015. On 20 February 2015, you agreed to extend the processing time under s 15AA of the FOI Act to 13 March 2015. On 13 March 2015, you agreed under s 15AA for a further extension of the processing time to 20 March 2015.

On 16 and 17 March 2015, you revised the scope of your request to exclude the names and direct contact details of non-SES officers and the direct contact details of SES officers.

I have found 8 documents that fall within the scope of FOI request. I did this by liaising with the line area responsible for data breach referrals who are therefore likely to be able to identify documents within the scope of the request. The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

With regards to the documents you requested:

- I have decided to grant you access to edited copies of documents 1, 2, 3, 6, 7 and 8 with irrelevant matter deleted under s 22.

- I have decided to grant you access to edited copies of documents 3 and 5 with exempt matter deleted under the law enforcement and public safety exemption (s 37) and the certain operations of agencies exemption (s 47E).

### **Material taken into account**

I have taken the following material into account into making my decision:

- the content of the document that fall within the scope of your request
- the FOI Act (specifically ss 11A, 22, 37, 47E)
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act
- submissions from the Department of Immigration and Border Protection (DIBP).

I have set out my reasons for this decision below.

### **Reasons for decision**

#### ***Irrelevant material (s 22(1)(a))***

Section 22 of the FOI Act allows the Office of the Australian Information Commissioner (OAIC) to prepare an edited copy of a document so as not to disclose any information that would reasonably be regarded as irrelevant to the FOI request.

Documents 1-8 contain the names and contact details of DIBP and OAIC staff. As you have revised the scope of your FOI request, I have deleted the names and direct contact details of non-SES officers and the direct telephone numbers of SES-officers under s 22(1)(a). Accordingly, I have decided to grant you access to edited copies of the documents with deletions, as set out in the Schedule.

Document 3 is an email from DIBP to the OAIC. It contains three attachments, one of which is a contract in relation to the provision of services in regional processing countries. I consider that this is irrelevant to the scope of your request and have therefore not provided it as part of the documents enclosed.

#### ***Law enforcement and public safety exemption (s 37)***

I have decided that an attachment to document 3 is exempt under s 37(1). Under s 37(1)(a) of the FOI Act, a document is exempt if its disclosure under the FOI Act would, or could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach, of the law.

The Australian Information Commissioner has issued Guidelines under s 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. In relation to s 37(1)(a), the Guidelines state that:

'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'<sup>1</sup>.

As noted above, document 3 is an email from DIBP to the OAIC. The email refers to DIBP's report which covers three data breaches. The email contains three attachments, one of which is the report.

I have examined the report. The report discusses the breaches and DIBP's response to the breaches. DIBP has advised that the report discusses data security breaches that are subject to a continuing Australian Federal Police investigation.

DIBP submits that:

...the information reveals an aspect under scrutiny in the current investigation. For that part of the investigation to be effective, it is necessary for an element of confidentiality to be maintained about the investigative process. In the event that this confidentiality is lost, the investigation as a whole will be prejudiced because an important information-gathering component may be rendered ineffective.

I accept DIBP's submissions and am satisfied that disclosure of the report could prejudice the AFP's ability to gather information relevant to the conduct of the investigation. As such, I consider the report to be exempt under s 37(1)(a) and have decided not to grant you access.

***Certain operations of agencies (s 47E(d))***

I have decided that material contained within document 5 is exempt under s 47E(d). Under s 47E(d) of the FOI Act, a document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The Guidelines require that for s 47E(d) to apply:

An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect and the reasons behind the identification of those particulars should be articulated during the decision making process. Those particulars should also indicate whether the effect could reasonably be expected to occur.<sup>2</sup>

Document 5 is an email thread. The original email from DIBP dated 14 May 2014 discusses a data breach in relation to a missing USB device which is routinely used to create a backup of DIBP's payroll data. The original email includes information on how to interpret the data on the USB device, which if released, would enable an individual to ascertain a DIBP employee's name, bank details and relevant fortnightly income.

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<sup>1</sup> Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* [5.77].

<sup>2</sup> *Guidelines* [6.94].

I am satisfied that disclosure of the information referred to above would have a substantial adverse effect on the proper and efficient conduct of DIBP's operations.

#### *Public interest test*

Section 11A(5) of the FOI Act sets out the public interest test which must be considered if a document is conditionally exempt. The provision provides that the agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

In assessing whether the disclosure of a document would be contrary to the public interest, I must balance the factors for and against disclosing the document. The public interest test is weighted towards providing access. Therefore, if the factors for and against releasing a document are even, we must provide access to the document.

Of the factors favouring disclosure set out in s 11B(3), one is relevant to this FOI request: promoting the objects of the FOI Act. In considering whether disclosure would be contrary to the public interest, I have considered the factors against disclosure as referred to in the Guidelines at [6.29]. I consider that the disclosure of the information could reasonably be expected to prejudice the management function of DIBP and also prejudice the protection of an individual's right to privacy.

I note that I have also ensured that the following factors have not been taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island
- access to the document could result in any person misinterpreting or misunderstanding the document
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the document could result in confusion or unnecessary debate.

#### Findings

In my view, the factors against the disclosure of the documents outweigh the factors in favour of their disclosure. For this reason, I consider that the information referred to above would be exempt under s 47E(d) of the FOI Act.

I consider that if the information is deleted from the document, document 5 would not be exempt. As such, I have decided to grant you access with deletions, as attached in the Schedule.

## **If you disagree with my decision**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### ***Internal review***

You have the right to apply for an internal review of my decision under section 54A of the 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 (including 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 Act to conduct an IC review of a decision, or an internal review decision, made by the OAIC. For this reason, if you make an application for IC review of my decision, it is likely that the Information Commissioner will decide (under section 54W(b) of the Act) not to undertake an IC review on the basis that it is desirable that my decision be considered by the AAT.

Section 57A of the 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 may submit your application or complaint by email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au), or by fax on 02 9284 9666. For further information, please call our enquiries line on 1300 363 992.

If you wish to discuss this decision, please contact me directly on 02 9284 9621.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rocelle Ago', with a long horizontal flourish extending to the right.

Rocelle Ago  
Assistant Director, Dispute Resolution Branch  
19 March 2015