



‘BB’ and Department of Human Services [2014] AICmr 11 (6 February 2014)

Decision and reasons for decision of
Privacy Commissioner, Timothy Pilgrim

Applicant:	‘BB’
Respondent:	Department of Human Services
Decision date:	6 February 2014
Application number:	MR12/00516
Catchwords:	Freedom of Information — Disclosure of surnames of departmental officers — Whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency — Whether documents conditionally exempt from release — (CTH) <i>Freedom of Information Act 1982</i> ss 47E(d), 11A(5)

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Summary

1. I set aside the decision of the Department of Human Services (the **Department**) of 10 January 2013 to partially refuse access to a document under the *Freedom of Information Act 1982* (the **FOI Act**).

Background

2. On 6 September 2012, the applicant made a request to the Department for access to a range of documents, including 'details of staff members who have accessed my Centrelink customer records from 1.1.2009 to 1.1.2012'.
3. On 30 October 2012, the Department made its decision on the request, which included refusing access to this document (referred to as document 34 in the Department's decision) in part. The Department decided that the names of Departmental officers, and the computer user identification codes of those officers, were exempt under s 47E(d). The Department provided access to the document with deletions applied under s 22 of the FOI Act.
4. On 12 November 2012, the applicant sought internal review of the Department's decision with regard to document 34.
5. On 19 December 2012, not having received a response to her application for internal review, the applicant sought IC review of the Department's deemed affirmation of its initial decision with regard to document 34 under s 54L of the FOI Act.
6. On 10 January 2013, the Department made its internal review decision in relation to document 34. The Department released the computer user identification codes to the applicant and affirmed the rest of its original decision to delete the Departmental officers' names.
7. Following the commencement of the IC review, the Department provided a copy of the document in issue to the Office of the Australian Information Commissioner (OAIC) in response to a notice to produce. The Department chose not to make any further submissions, instead relying upon the reasons outlined in its internal review decision.

Decision under review

8. The decision under review is the internal review decision of the Department dated 10 January 2013, refusing access to the surname and first initial of Departmental officers contained in document 34.

Certain operations of agencies exemption (s 47E)

9. The key issue in this review is whether – as the Department contends – the disclosure of Departmental officers' names would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department; and, if so, whether disclosure would be contrary to the public interest.

10. Section 47E of the FOI Act relevantly provides:
- Public interest conditional exemptions—certain operations of agencies**
- A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:
- ...
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
11. 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. The Guidelines explain that:
- 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.¹
12. The Guidelines also explain that:
- 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'.²
13. The document that is the subject of this IC review is a five-page report which shows which Departmental officers accessed the applicant's record. It lists the date of access, the user IDs, a surname and first initial for each Departmental officer who accessed the applicant's record.
14. In its internal review decision, the Department provided two reasons for its finding that Departmental officers' names are exempt under s 47E(d).
15. Firstly, the Department said that disclosure of Departmental officers' names was contrary to the Department's enterprise agreement, and that disclosure in contravention of the agreement would harm the Department's industrial relations.
16. In addition, the Department said that disclosure of staff names would undermine the Department's control of how the public contacts the Department. It said that releasing the names of Departmental staff would allow members of the public to contact Departmental staff directly, which would impede its management of customer contact.

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* [5.13] – [5.14].

² *Guidelines* [5.17], footnotes omitted.

The Department's enterprise agreement

17. In its internal review decision the Department stated that disclosure of Departmental officers' names was contrary to the Department's enterprise agreement. It stated that:

The enterprise agreement provides that the department is working towards ensuring that all employees can choose whether they provide their full name in response to public enquiries, including in correspondence and face to face contact. Consequently the disclosure of departmental officers' full names is likely to adversely affect the operations of the agency if departmental officers perceive the disclosure of their full names to be contrary to the department's enterprise agreement.
18. Part H.7 of the Department's enterprise agreement states:

H7 EMPLOYEE IDENTIFICATION

H7.1 The department will work towards ensuring that all employees have a choice about whether they provide their full name or only their first name in response to public enquiries, including in correspondence and face to face contact.

H7.2 In relation to identification of employees by their email address, the department will seek to ensure that, within six months of the commencement of this Agreement, employees are able to choose to send emails in response to public enquiries that do not identify them by their full name.

H7.3 In the event that employees elect to use only their first name in response to public enquiries, they must ensure that sufficient additional information is provided to make the employee identifiable for future customer contact.
19. I have considered whether this clause of the enterprise agreement is relevant to a disclosure of information in response to an FOI request.
20. Clause H7 says that the Department will 'work towards ensuring' that employees 'have a choice' about whether they provide their full name or only a first name 'in response to public enquiries', including in correspondence and face to face contact.
21. This clause does not unconditionally assure Departmental officers that their identity will be protected. It says the Department will 'work towards' giving individual officers 'a choice' about whether they will disclose their identity in direct dealings with members of the public. Furthermore, clause H7 applies to situations in which staff members are responding 'to public enquiries'. It refers specifically to 'correspondence and face to face contact' between Departmental officers and members of the public. It does not, on its face, apply to other situations in which staff members might have their names disclosed by the Department, including a response by the Department to FOI requests.
22. For these reasons, I do not agree with the Department that clause H7 is directly relevant to the disclosure of staff names that are contained in documents released in response to an FOI request.

23. The applicant, in submissions to the OAIC, noted that clause H.7.3 indicates that employees must ensure that additional information is provided to allow them to be identified. It does not allow employees to deal with members of the public anonymously. This further undermines the Department's argument that disclosure of staff member names would cause a perception that the Department is acting contrary to its enterprise agreement.
24. The Department's submission is that disclosure of departmental officers' names is likely to substantially and adversely affect the operations of the agency if departmental officers perceive the disclosure of their names to be contrary to the department's enterprise agreement. For the reasons above, I am not satisfied that this is the case.

Effect on managing contact to the Department

25. In its internal review decision, the Department stated that disclosure of Departmental officers' names would impede the management of contacts made to the Department. It stated that:

... the department provides entry points for the public to contact various parts of the department. The purpose of providing those entry points is to allow the department to control how the public contacts the department so that the volume of contacts can be efficiently managed, and to ensure that customers contact the right person at the right time via the right channel. In a department the size of Human Services, it is critical that all contacts are made through the dedicated entry points provided to manage that contact. It is contrary to the proper and efficient conduct of the operations of the agency for contact to be made by other avenues.
26. I do not accept that disclosure of the names of Departmental officers who have accessed a particular Centrelink customer record would, or could reasonably be expected to have the effect claimed by the Department. The report shows the officers acting in the course of their duties as employees in relation to a particular customer. It is not reasonable to conclude that release of these names would divert contact on a scale that is substantial and adverse.
27. More generally, the fact that the enterprise agreement states that employees need to remain identifiable, whether it is by their name or through other identifiers, appears to contradict the claim that identification would impede the management of contacts made to the Department.

Findings

28. For the reasons above, I am not satisfied that the disclosure of the names of Departmental officers in document 34 would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Department's operations. Accordingly, the document sought by the applicant is not conditionally exempt under s 47E(d).

The public interest test (s 11A(5))

29. Because I have found that the document is not conditionally exempt, it is not necessary for me to consider whether disclosure of the document would be contrary to the public interest for the purposes of s 11A(5) of the FOI Act.

Decision

30. Under s 55K of the FOI Act, I set aside the Department's decision of 10 January 2013 and decide, in substitution for that decision, that document 34 should be provided to the applicant in full.

Timothy Pilgrim
Australian Privacy Commissioner

6 February 2014

Review rights

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is \$816, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.