

Attachment B – Reasons – Internal Review: Freedom of Information Request No. LEX 3029

Authority

As a Manager, Corporate and Information Law, I am an authorised decision-maker under section 23 of the FOI Act.

Retrieval process

To identify documents for your request, I arranged for relevant staff likely to be able identify documents to undertake a comprehensive search of the relevant electronic holdings used by the AEC.

Relevant Documents

With regard to the Relevant Documents identified in Attachment A, I have decided:

Access in full

- a) to grant access in full to Document Nos 4, 6 & 7

Edited copies

- b) to grant access to an edited copy of Documents 1, 2 & 3 from which exempt matter and irrelevant information has been deleted under section 22 of the FOI Act.

Refuse access

- c) refuse access in full to Document 5.

Material taken into account

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

- a) the content of the documents that fall within the scope of your FOI Request;
- b) the FOI Act, specifically section 27, 47C & 47F ;
- c) the guidelines ('[FOI Guidelines](#)') issued by the Australian Information Commissioner under section 93A of the FOI Act;
- d) the [FOI Guidance Notes](#), July 2011 issued by the Department of Prime Minister and Cabinet; and
- e) Consultation with relevant third parties.

Detailed Reasons

Attachment A indicates each Relevant Document to which access is refused or access is granted. My reasons for refusing or granting access are given below.

Public interest conditional exemptions – deliberative matter

Findings

With respect to document 5 I found that this document contains deliberative matter.

Consideration

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

- a) An agency; or
- b) A minister; or
- c) The Government of the Commonwealth

Part 6.52 of the FOI Guidelines provides that:

Deliberative matter is content that is in the nature of, or relating to either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded, or
- a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister (s 47C(1))

Part 6.61 of the guidelines provides that:

A deliberative process may include the recording or exchange of:

- opinions
- advice
- recommendations
- a collection of facts or opinions, including the pattern of facts or opinions considered[42]
- interim decisions or deliberations

The Administrative Appeals Tribunal decision of Wood; Secretary, Department of Prime Minister and Cabinet and (Freedom of Information) [2015] AATA 945 explained that the meaning of the words 'opinion', 'advice' and 'recommendation' all involve consideration, followed by the formation of a view either about a certain subject or about a course of action and the subsequent transmission of that view.

Initial Outcome

I have carefully reviewed documents 5 and consider that this document includes opinions, advice and recommendations. The opinions, advice and recommendations relate to the functions of the AEC under the Commonwealth Electoral Act 1918 (Cth) and the Public Service Act 1999 (Cth).

As outlined above, section 47C does not extend to operational information or purely factual information. I have considered the substance of this document and consider that while some purely factual information is contained within the relevant documents, this material relates to the advice and opinions being considered. To disclose these facts would disclose the nature of the advice being considered.

I accordingly find that document 5 contains the deliberative material of the AEC. This includes opinions, advice, deliberations and recommendations made by staff of the AEC which relate to the functions of the AEC as provided in section 7 of the Commonwealth Electoral Act 1918 (Cth).

Weighing of public interest factors

Having concluded that the documents are conditionally exempt on the basis that they contain deliberative material, I now need to consider whether it would be contrary to the public interest for them to be disclosed to you.

Section 11 A(5) of the FOI Act provides:

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.

Section 11A(5) requires me to balance any factors that weigh in favour of disclosure against factors that weigh against disclosure.

- I consider that the public interest factors that weigh in favour of disclosure are that it would: promote the objects of the FOI Act; and
- allow a person to access his or her personal information.

I consider that the public interest factors that weigh against disclosure are that:

- disclosure could reasonably be expected to prejudice the AEC's ability to obtain similar information in the future;
- disclosure could reasonably be expected to prejudice the AEC's ability to attain the objects of the consultation process conducted by the AEC;
- disclosure could reasonably be expected to prejudice the AEC's management function and ability to perform its functions; and
- disclosure could reasonably be expected to prejudice the effective and efficient functioning of the AEC.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in document 5 is outweighed by the public interest against disclosure. I have not taken into account any of the irrelevant factors set out in section 118(4) of the FOI Act in making this decision.

Final outcome

I have accordingly decided that document 5 is exempt.

Public interest conditional exemptions – personal privacy

Findings

With respect to Document Nos 1 & 2 I found that these documents contain personal information of AEC staff.

Consideration

Section 47F of the FOI Act conditionally exempts a document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (with certain exceptions regarding the disclosure to a person of their own personal information).

Initial Outcome

Accordingly, I am satisfied that these documents fall within the scope of the conditional exemption for personal privacy provided by section 47F of the FOI Act.

Weighing of public interest factors

Under subsection 11A(5) of the FOI Act, the AEC (as an agency) 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.

My weighing of public interest factors follows.

(a) I considered the following factors favouring disclosure:

- (i) There is a risk of harm to an individual in giving access to personal information, which may be used to facilitate harassment and identity theft.
- (ii) There is a risk of harm to an individual in giving access to the individual's email address, which may be used to facilitate the service of documents in litigation.

(b) I considered the following factors that militate against disclosure:

Promoting the objects of the Act—

- (i) increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
- (ii) increasing scrutiny, discussion, comment and review of the Government's activities.

In accordance with subsection 11B(4) of the FOI Act I excluded from my consideration the following matters:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) 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;
- (d) access to the document could result in confusion or unnecessary debate.

In considering the weighing of public interest factors I had regard to the FOI Guidelines at paragraphs 6.7–6.28.

In my view, the factors against disclosure of the document outweigh the factors in favour of disclosure for the following reason

- (a) The harms to the individuals identified in paragraph 20(a) of this letter may be substantial

Final Outcome

Accordingly, I am satisfied that the Document Nos. 1 & 2 are exempt.

Access to an edited copy given

In accordance with section 22 of the FOI Act, I considered whether it is both possible and practicable to prepare an edited copy of Document Nos 1, 2 & 3 from which exempt and irrelevant material is redacted.

Findings

I found that:

- a) it is possible to prepare an edited copy of Document Nos 1-3 modified by deletions, ensuring that:
 - i) access to each edited copy would be required to be given under section 11A (access to documents on request) of the FOI Act; and
 - ii) each edited copy would not disclose any information that would reasonably be regarded as irrelevant to the FOI Request;
- b) it is reasonably practicable for the AEC to prepare each edited copy that would be meaningful to a reader, having regard to:
 - i) the nature and extent of the modifications; and
 - ii) the resources available to modify each document; and
- c) it is not apparent that you would decline access to each edited copy.

Consideration

I had regard to:

- a) section 22 of the FOI Act.
- b) paragraphs 3.95–3.100 of the FOI Guidelines.

Outcome

I concluded that it is both possible and practicable to prepare an edited copy of Document Nos 1 - 3 from which exempt and irrelevant matter is redacted.