



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/274

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Bob Buckley
Convenor
Autism Aspergers Advocacy Australia (A4)

DECISION BY: Mr Brendan MacDowell
Assistant Secretary
Ministerial and Parliamentary Support
Branch

By email: convenor@a4.org.au

Dear Mr Buckley

I refer to your request, of 24 November 2020, made to the Department of the Prime Minister and Cabinet (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**), in the following terms:

On the following dates, I used the Prime Minister's online contact form to raise a number of issues and ask questions. Other than the initial automatic response, I received nothing further. I submitted messages on the following dates:

- part 1 and part 2 on 9/10/2020
- 19/10/2020
- 29/10/2020, and
- 1/11/2020.

At this stage, I am interested to know what happened to the messages I sent on 9/10 and 19/10.

I hereby request, under the provisions of the Freedom of Information Act 1982 the information relating the message I sent to the Prime Minister via his contact form on 9/10/2020 and the 19/10/2020 about ...

1. *about the record of those messages including whether a response would be provided to me and if so what might be in the response, and*

2. *communication with any other government representative or agency who was contacted about these messages and what communication with others occurred about the issues raised in my messages.*

On 9 December 2020, the Department wrote to you as follows:

We are informed that you should now have received a response to your letters of 9 October 2020 from the Hon Ben Morton MP, Assistant Minister to the Prime Minister.

With that in mind, we seek your advice on whether you wish to withdraw the part of your request relating to your correspondence of 9 October 2020. The Department would continue to process your FOI request in relation to your correspondence of 19 October 2020.

On 15 December 2020, you responded as follows:

...

I indicated on the telephone that while I received a letter from The Hon Ben Morton MP, Assistant Minister to the Prime Minister and Cabinet, the response did not address the single question asked in our letter. As our original letter highlighted our Unanswered Questions Policy, we are bound to interpret the lack of response accordingly (see <https://a4.org.au/node/2288>).

We are keen to know what guidance (if any) the Assistant Minister was given in relation to our original letter and to the single question it contained. In other words, we remain interested in the issues raised in our FoI request of 24/11/2020. We do not want to withdraw any part of that request.

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the Act.

Documents relevant to the terms of your request

The Department has identified six documents relevant to the terms of your request (the **requested documents**).

Decision

I have decided to:

- grant access to Documents 1, 3, 4 and 5, with irrelevant material deleted under section 22 of the FOI Act;
- grant access, in part, to Document 6, with material exempt under section 47C (deliberative material) of the FOI Act, and irrelevant material deleted under section 22 of the FOI Act; and
- refuse access to Document 2 under section 47C of the FOI Act.

Further information is in the schedule at Attachment A.

The documents that can be released to you are attached.

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

- the terms of your request;
- the requested documents;
- consultation comments from the Department of Social Services and the National Disability Insurance Agency;
- the FOI Act; and
- The ‘Guidelines made by the Australian Information Commissioner issued under section 93A of the *Freedom of Information Act 1982*’ (the **FOI Guidelines**).

Reasons

Section 47C of the FOI Act – deliberative material

Section 47C(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, 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 an agency, a Minister, or the Government of the Commonwealth.

Section 47C(2)(b) of the FOI Act provides that ‘deliberative matter’ does not include ‘purely factual material’.

The FOI Guidelines relevantly provide as follows:

A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one’s course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

‘Deliberative process’ generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.¹

...

‘Deliberative matter’ is a shorthand term for ‘opinion, advice and recommendation’ and ‘consultation and deliberation’ that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words ‘opinion, advice or recommendation, consultation or deliberation’.²

¹ FOI Guidelines, [6.58] – [6.59] (footnotes omitted).

² FOI Guidelines, [6.63] (footnotes omitted).

The FOI Guidelines provide that ‘purely factual material’ does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.³

I am satisfied that Document 2 and part of Document 6 contain deliberative matter which was prepared in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department. I am also satisfied that Document 2 and that part of Document 6 do not contain ‘purely factual material’.

I am therefore satisfied that Document 2 and part of Document 6 are conditionally exempt under section 47C of the FOI Act.

Section 11A(5) of the FOI Act – the public interest test

Section 11A(5) of the FOI Act provides that a conditionally exempt document must nevertheless be disclosed to the applicant unless its disclosure would, on balance, be contrary to the public interest.

In determining whether disclosure would be contrary to the public interest, the FOI Act requires a decision-maker to balance the public interest factors in favour of disclosure against the factors against disclosure.

Section 11B(4) of the FOI Act sets out the following factors that the decision-maker must not take into account when deciding whether access to the document would be contrary to the public interest:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in 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 documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- d) access to the document could result in confusion or unnecessary debate.

I have not taken any of the above factors into account in making my decision.

Factors in favour of disclosure

The FOI Act sets out four factors favouring disclosure which must be considered if relevant, namely:⁴

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or
- allow a person to access his or her personal information.

I am satisfied that disclosure of the conditionally exempt information may promote the objects of the FOI Act. The FOI Guidelines contain a non-exhaustive list of public interest factors favouring disclosure that may also be relevant in particular circumstances.⁵ However,

³ FOI Guidelines, [6.73] (footnotes omitted).

⁴ See section 11B(3) of the FOI Act and FOI Guidelines, [6.17].

⁵ FOI Guidelines, [6.19].

the list in the FOI Guidelines contains no additional relevant public interest factors to those that I have already taken account of as described above.

Factors against disclosure

The FOI Act does not provide for any public interest factors against disclosure that decision makers may consider. The FOI Guidelines contain a non-exhaustive list of public interest factors against disclosure that may also be relevant in particular circumstances,⁶ to which I have had regard.

I consider that disclosure of the deliberative material:

- would or could reasonably be expected to adversely impact the Department's ability to efficiently and effectively manage and respond to correspondence from the public; and
- would inhibit the ability of the Department to effectively serve and support relevant ministers in responding to ministerial correspondence, due to the risk of internal deliberations and working documents in relation to that process being released.

Balancing the public interest

After careful consideration of all relevant factors, I have decided that, on balance, the public interest factors against disclosure outweigh the public interest in favour of disclosure.

I am therefore satisfied that disclosing the conditionally exempt information in Documents 2 and 6 would, on balance, be contrary to the public interest.

Section 22 of the FOI Act – irrelevant material

Section 22 of the FOI Act provides that exempt or irrelevant information may be deleted from a copy of a document, and access granted to such an amended copy where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

On 1 December 2020, the Department advised you that the following information would be treated as irrelevant material and redacted from any documents for release:

- any person's signature;
- the names and contact details of Australian Public Service (APS) officers not in the Senior Executive Service (SES);
- the mobile or direct numbers of SES officers;
- the names and contact details of Ministerial staff at a level below Chief of Staff.

In accordance with section 22 of the FOI Act, I have excluded the parts of the requested documents that contain the above details, where relevant, and I have removed the parts of the requested documents that contain irrelevant information outside the scope of your request.

Publication of documents

Section 11C of the FOI Act requires an agency to publish on its web site information released to an applicant under the FOI Act. Section 11C(1)(a) provides that this requirement does not

⁶ FOI Guidelines, [6.22].

apply to personal information about any person, if it would be 'unreasonable' to publish the information.

The documents released to you (with the exception of material containing your personal information) will be published on the Department's FOI disclosure log.

Processing and access charges

I have decided not to impose charges in respect of your request.

Review rights

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to a request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely



Brendan MacDowell
Assistant Secretary
Ministerial and Parliamentary Support Branch

24 December 2020