



GPO Box 1797 Melbourne 3001

Tony Baldwin

Our reference: 1-FTZJSUH

7 September 2018

Decision regarding your Freedom of Information (FOI) Request

Dear Mr Baldwin,

I refer to your application requesting a document under the *Freedom of Information Act 1982* (FOI Act), which I received on 21 August 2018.

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Your request

You have requested access to the following documents:

I request a copy of the tax ruling of 23 December 2014 with respect to Defence is required to withhold an amount for taxation purposes from the payments made to officers of cadets and instructors of cadets in accordance with the tax ruling on 23 December 2014.

My decision in relation to your request

I have decided that the document you have requested is exempt from production in full, pursuant to section 38 of the FOI Act.

In coming to my decision, I have referred to the following:

- Contents of the documents requested
- The FOI Act
- Consultation with the relevant Business and Service Lines within the ATO
- *Taxation Administration Act 1953*
- FOI Guidelines issued by the Australian Information Commissioner.

Your rights of review

If you are unhappy with my decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted.

A request for an internal review needs to:

- be in writing
- be sent to us within 30 days of being notified of my decision, and
- be sent, quoting the reference number at the top of this letter, via:

-email at foi@ato.gov.au, or

-mail to:

Australian Taxation Office

GPO Box 2934

ADELAIDE SA 5001

The internal review will be done by an officer who did not make the initial decision.

A request for an independent review by the Australian Information Commissioner needs to:

- be sent within 60 days of being notified of my decision
- include a copy of this notice
- include an address where notices can be sent (e.g. your email address), and
- be sent to:

Email: enquiries@oaic.gov.au or,

Mail: GPO Box 5218

Sydney NSW 2001

For further details regarding the Australian Information Commissioner visit www.oaic.gov.au

You may also apply to the Australian Information Commissioner if you have not been informed of the outcome of an internal review within 30 days.

Complaints

Any complaint about the processing of your FOI request can be forwarded to the Information Commissioner. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1

email: enquiries@oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

in person: Level 3, 175 Pitt Street, Sydney NSW

The Information Commissioner can be contacted on 1300 363 992 for the cost of a local call.

Yours sincerely



D Lux-Bridges
General Counsel
Australian Taxation Office

Statement of Reasons

Decision

I have decided to refuse your request in full, pursuant to section 38 of the FOI Act.

Reasons for Decision

Section 11 of the FOI Act provides that you have a legally enforceable right to obtain access to a document of the ATO. Under section 11A of the FOI Act, the ATO must give you access to a document upon your request.

However, I am not required to provide access to a document where the document is exempt from production under a provision in Part IV of the FOI Act.

Section 38 of the FOI Act exempts material that is prohibited from release by another Act as specified in Schedule 3 to the FOI Act. Of relevance, section 38 applies where disclosure is prohibited under section 355-25 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Section 355-25 of Schedule 1 to the TAA states that it is an offence for taxation officers to disclose protected information to an entity, who is not the entity to whom the information relates, or a 'covered entity' per section 355-25(2).

Section 355-30 of Schedule 1 to the TAA provides that protected information is information that:

- (a) was disclosed or obtained by a taxation officer under, or for the purposes of, a taxation law;
- (b) relates to the affairs of an entity; and
- (c) identifies, or is reasonably capable of being used to identify, the entity.

Sections 355-45 to 355-70 of Schedule 1 to the TAA provide exceptions to the prohibition in section 355-25.

In this matter, you have sought to obtain a copy of a ruling that you state was issued on 23 December 2014.

I have been unable to identify any public ruling that was issued on that date that deals with the subject matter as set out in your request. As such, if any other type of ruling existed, it would exclusively contain protected information of another entity.

As I have no evidence that you would be a covered entity of the entity to whom any other ruling would relate, or that any exceptions would apply in your circumstances, I would be prohibited from providing any information within the scope of your request to you.

As such, any documents that would fall within the scope of your request are exempt from production under section 38 of the FOI Act, and furthermore it would be an offence under section 355-25 of Schedule 1 to the TAA to provide the documents to you outside of the FOI Act.