



GPO Box 4889, Sydney NSW 2000

D Conway
RightToKnow

Our reference: 1-HIST9PC
Issue date: 18 April 2019

Decision about your Freedom of Information Request

Dear D Conway,

I refer to your request for documents under the *Freedom of Information Act 1982 (FOI Act)* which we received on 1 April 2019.

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

Summary

You requested:

"I'm advised in a recent speech [the Commissioner of Taxation] gave to the Tax Institute you referred to some A.T.O. employees as "Village Idiots".

I request the following documents if such documents exist:

- 1. A transcript of your whole speech*
- 2. Any complaints put to you in relation to your comment*
- 3. Any discussions on the topic on internal staff discussion boards*
- 4. Any other documents held by the A.T.O. on the matter"*

Search for documents

We contacted the relevant business lines within the ATO and had officers from those areas conduct a search of all relevant ATO computer systems and hard copy files that may contain documents within the scope of your request.

I am satisfied that officers from those areas conducted a reasonable search of all relevant ATO records that may contain documents within the scope of your request.

A search on the ATO Yammer network for the phrase "*Village Idiot*" revealed 1 'conversation' which falls within the scope of your request, containing not less than 50 comments, 114 responses and a further significant number of "like" interactions from ATO staff members.

In respect of your request for a transcript, I note that this is available publicly online and includes the 'Question and Answer' portion of the Commissioner address on 15 March 2018.

The complete transcript is available at <https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Commissioner-s-address-to-the-Tax-Institute-National-Convention-2019/> by pressing the download transcript button located at the top right hand corner of the video. Accordingly, I have not reproduced the document here.

Material taken into account

In reaching my decision I relied on the following documentary evidence:

- the terms of your request;
- the contents of the requested documents;
- advice from the relevant business area;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Decision

Following searches by the relevant areas within the ATO, in addition to the transcript which I have detailed above, I have identified 1 further document as being relevant to the scope of your request.

I have decided refused to release that document in full. My reasons for refusing you access are detailed below.

Reasons for Decision

Section 47F - personal privacy

I have decided to exempt material requested from release in full pursuant to section 47F of the FOI Act.

The relevant part of section 47F provides as follows:

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;*
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
- (c) the availability of the information from publicly accessible sources;*
- (d) any other matters that the agency or Minister considers relevant.*

Section 4 of the FOI Act defines 'personal information' as "information or an opinion (including information forming part of a database), whether true or not, and whether recorded

in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion."

The information you have requested includes 'conversations' contained in Yammer wherein the subject matter is the Commissioner of Taxation's address to the Tax Institute in which the Commissioner of Taxation made reference to "Village Idiots". By way of background, Yammer is an internal collaboration tool provided to ATO staff in a social network style environment, to which only current ATO employees are able to obtain access.

The 'conversations' requested contain the personal opinions of ATO employees whose names appear against their individual comments. However, I find that even if the names of ATO staff were removed from the documents, their identity and therefore, their opinions, would reasonably be able to be ascertained should the information be released publicly. I have made this finding given the relative ease with which anyone with access to the internal ATO Yammer network could attribute the comments to an individual and subsequently make those identities available to the general public.

I am also satisfied that disclosure of the documents would involve the unreasonable disclosure of personal information because:

- such personal information, contained on an internal networking tool within the ATO, is not available to non-ATO staff;
- the information is not otherwise available from publicly accessible sources;
- the FOI Act does not control or restrict subsequent use or dissemination of information released under the FOI Act;
- the personal opinions expressed by ATO staff, particularly about non-taxation related topics such as their opinion of a speech given by the Commissioner of Taxation, are not connected to the administration of the taxation and superannuation systems and therefore the release of those opinions would not advance the public interest in government transparency and integrity;
- the individuals to whom the personal information relates are likely to have an expectation that personal opinions shared with their colleagues will not be made available to the general public.

I am also satisfied that should the information requested be made publicly available, the ATO would be required to consult each staff member as an affected third party under subsection 27A(2) of the FOI Act before its release, given the release of the personal information would likely be opposed by those staff members and therefore they may wish to make a submission before any information is released.

Furthermore, after consideration of the number of staff identified within the conversation, I am satisfied that the time taken to undertake this consultation process with every staff member, and divert them from their usual duties, would in itself constitute an unreasonable diversion of the ATO's resources.

As I am satisfied that the entirety of the document is conditionally exempt pursuant to section 47F; subsection 11A(5) of the FOI Act requires me to consider whether providing you access would, on balance, be contrary to the public interest.

Subsection 11A(5) provides that I must give you access to the documents which are conditionally exempt at a particular time unless (in the circumstances) access to the document or parts of the document at that time would, on balance, be contrary to the public interest.

I have found the following public interest factors do not favour access to the parts of the document being provided to you:

- access to the conditionally exempt document would give public access to personal information relating to people other than yourself;
- access to the conditionally exempt document would result in the breach of an expectation held by ATO staff that their personal information will not be disclosed to others without their consent;
- access to the conditionally exempt document would reasonably be expected to prejudice the protection of an individual's right to privacy; and
- access to the conditionally exempt document would not reveal the reasons for a decision made by the ATO, nor would it enhance the scrutiny of the ATO's decision making or reveal policies, rules or guidelines followed by ATO staff in its dealing with members of the community.

The general public interest in promoting the objects of the FOI Act and furthering the applicant's general right of access to information held by a Commonwealth agency (which is a national resource managed for public purposes) is in my opinion outweighed by the stronger public interest in protecting the personal privacy of ATO staff.

Having considered all of the public interest factors set out above, I have decided that providing you with access to the parts of the document that are conditionally exempt under section 47F would, on balance, be contrary to the public interest.

As such, the documents that are conditionally exempt under section 47F are exempt.

Your review rights

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

Internal review

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: foi@ato.gov.au
post: GPO Box 4889, Sydney NSW 2000

The internal review application must be made within 30 days of the date of this letter. Where possible please attach reasons why your client believes review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, include a copy of this notice, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Complaints

Any complaint about the processing of your FOI request can be forwarded to the OAIC. 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 OAIC can be contacted on 1300 363 992 for the cost of a local call.

Yours sincerely,

S Sword

Senior Lawyer
General Counsel