



D Conway

By email only:

foi+request-5338-aa588d9c@righttoknow.org.au

Our reference: 1-HZSQU55
21 June 2019

Decision regarding your request for Internal Review

Dear D Conway,

1. I refer to your internal review request dated 24 May 2019, seeking an internal review of the decision dated 18 April 2019 (**the original decision**).
2. I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (**FOI Act**) to make decisions in relation to FOI requests, including internal review requests.

Your original request

3. On 1 April 2019, you submitted a request under the FOI Act for access to documents. You requested the following:

"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"*
4. On 18 April 2019, the original decision maker sent you a letter refusing your request pursuant to section 47F of the FOI Act, as the disclosure of the documents would involve the unreasonable disclosure of personal information.

Your request for internal review

5. On 24 May 2019, you requested an internal review of the original decision which was addressed to the Commissioner of Taxation and included the following comments:

"I do apologize most sincerely but your response just doesn't cut the mustard.

I respectfully request an internal review.

6. I note you have requested an internal review outside the 30 day time limit as outlined in paragraph 54B(1)(a) of the FOI Act. Nevertheless, in the present circumstances I have decided

to allow a further period to make an internal review application pursuant to subsection 54B (2) of the FOI Act.

Review Decision

7. I have reviewed the file for the original decision. Having considered your request afresh and in line with the further submissions you made in your request for internal review, I have decided to affirm the original decision to refuse access to the documents.
8. In reaching my decision, I have taken into account the following evidence and authorities:
 - the terms of your FOI request;
 - contents of the file of the original decision-maker in respect of the original request;
 - the FOI Act;
 - the Guidelines issued by the Australian Information Commissioner (**OAIC**) under section 93A of the FOI Act (**the Guidelines**); and
 - the submissions provided with the original request and with your internal review application.

Reasons for Review Decision

9. I rely on the original decision maker's reasoning and make the following additional comments in relation to aspects of the original decision.

Search and Retrieval process

10. In regard to points 1, 2 and 4 of your original request, I am satisfied that a reasonable search has been conducted by the original decision maker and that there are no other documents relevant to these parts of your request.
11. You were, however, provided with a link to the Commissioner's address of 15 March 2018 as part of the original decision. For your convenience, the transcript is publicly available here - <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.

Personal privacy

12. In terms of releasing the documents requested at point 3 of your original request, I rely on the original decision maker's reasoning that releasing the documents would be an unreasonable disclosure of personal information. I am satisfied that the documents comprise of personal information about identifiable individuals, the comments made are personal in nature, and are not related to a tax policy decision or related administrative matter.
13. In terms of what is considered 'unreasonable disclosure of personal information', I refer you to the Federal Court decision of *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, where Justice Heerey J considered that:

"... if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed ... disclosure would be unreasonable".

14. In determining whether the disclosure of the personal information would be 'unreasonable', I have had regard to the availability of the information from publicly available sources, the extent

to which the information is well known and the impact the release of the information would have on that individual to which the information relates.

15. I am satisfied that the disclosure of personal information would be unreasonable, particularly since –
 - a. the documents do not relate to the affairs of government
 - b. the documents do not inform or otherwise relate to any administrative decision made under taxation laws
 - c. the documents do not relate to the development of ATO policy or procedure or communications with government regarding the functions or operations of the ATO
 - d. the documents contain the personal opinions of ATO staff, posted on an internal discussion board, which is not publicly available.
16. It is also apparent from the wording of your request for internal review on 24 May 2019, that you already have access to the documents you have requested under FOI.
17. Given s47F of the FOI Act is a conditional exemption, I am required to balance the personal privacy of ATO staff with the public interest the release of the documents may advance or promote.
18. I have considered the public interest factors in favour of disclosure set out in paragraphs 6.17 and 6.19 of the FOI Guidelines, these include:
 - a. promoting the objects of the FOI Act, including to:*
 - i. inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community*
 - ii. reveal the reason for a government decision and any background or contextual information that informed the decision*
 - iii. enhance the scrutiny of government decision making*
 - b. inform debate on a matter of public importance, including to:*
 - i. allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official*
 - ii. reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct*
 - iv. reveal deficiencies in privacy or access to information legislation."*
19. I have also considered the public interest factors against disclosure including factors set out in paragraph 6.22 of the FOI Guidelines.
20. I am of the view that the only public interest factor favouring release is the general interest favouring a right of access to information held by a Commonwealth agency. I am satisfied that there is a more significant public interest against release in protecting the personal privacy of ATO staff. On balance, I consider that it would be contrary to the public interest to release the document.
21. As such, I refuse access to the document you have requested on the basis that section 47F of the FOI Act applies and that the public interest weighs against disclosure.

Your review rights

22. If you are dissatisfied with my decision, you may apply for an Information Commissioner review of my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, 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

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

23. Your application must include a copy of this letter (and any attachments), an address where notices can be sent to you (eg. your email address) and particulars of the basis on which you dispute the decision.

24. Visit the Australian Information Commissioner website, www.oaic.gov.au/freedom-of-information/foi-reviews, for more information about Information Commissioner Review.

Complaints

25. 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

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

Yours sincerely,

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Principal Lawyer

General Counsel

Australian Taxation Office