



Our reference: 1-PM9II0A

2 July 2021

Decision regarding Freedom of Information (FOI) request

Dear Mr Morrison-Francis,

I refer to your request for documents under the *Freedom of Information Act 1982 (FOI Act)*, received in the ATO on 4 June 2021. I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Your request

The wording of your request asks for the following documents:

'Please provide all communication from the 1st April 2021 to todays date between Assistant Commissioner Jenny Lin and Mr John Harland (Withholding Variations Team) in relation to the Withholding Variations for veterans due to the recent Federal Court win.'

Summary of my decision in relation to your FOI application

I have located 11 documents within the scope of your request. Of these, I have decided to release 6 documents in part, with deletions made to remove irrelevant material under section 22 of the FOI Act as well as material exempt from release under section 47E (as noted in the attached Schedule of Documents). The remaining 5 documents are exempt from release in full under section 38 of the FOI Act, and are not listed in the Schedule.

Reasons for Decision

In reaching my decision, I have relied on the following evidence and authorities:

- Scope of your request;
- The FOI Act;
- The *Taxation Administration Act 1953*;
- Consultation with the relevant business and service lines within the ATO;
- FOI Guidelines issued by the OAIC.

Section 22 – Information irrelevant to your request & edited copies of documents

Section 22 of the FOI Act permits a decision-maker to edit a document by deleting irrelevant or exempt material so that the document may ultimately be made available to the applicant.

Irrelevant material

Pursuant to subparagraph 22(1)(a)(ii) of the FOI Act, documents being released to you (as noted in the Schedule) include deletions of material irrelevant to your request.

The documents are email chains that include correspondence that is not between 'Assistant Commissioner Jenny Lin and Mr John Harland', as per the scope of your request. It is for this reason that material has been deleted (in part) from the documents, pursuant to section 22 of the FOI Act.

Edited copies of documents

In addition to the removal of irrelevant material as above, subsection 22(1) of the FOI Act provides that where FOI provisions apply to exempt certain material, I am to grant you access, where possible, to edited copies of the documents with the exempt material removed.

The 6 documents being released have had material partially exempted, and hence I have provided edited copies. The specific exemption provision which applies to these documents is as follows.

Section 47E – Certain operations of agencies

I have applied redactions to the documents (as noted in the Schedule) under subsection 47E(d) of the FOI Act to remove the phone numbers of ATO officers, including an ATO Senior Executive Staff officer. Subsection 47E(d) provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient operations of an agency.

Release of the phone numbers has the potential to result in calls to these officers directly, many of whom are senior staff, responsible for providing internal assistance to senior staff, or are not primarily engaged in client-facing roles. Release of their direct contact numbers could allow members of the public to circumvent the appropriate avenues for communicating with our office, and, in the case of mobile phone numbers, has the potential to result in calls to these officers outside of regular business hours. This would create a significant imposition on the officers and inhibit the proper and efficient performance of their duties.

On the other hand, the removal of the phone numbers does not prohibit you or members of the public from contacting the ATO via the appropriate channels, nor does it dilute the substance of the rest of the information contained within the documents. Accordingly, objects of the FOI Act such as increasing public scrutiny and review of Government activities are preserved.

I have considered the public interest factors for and against disclosure and have decided that providing you with access to the conditionally exempt material would, on balance, be contrary to the public interest. I find it particularly persuasive that the phone numbers have little informational value and will not provide you with any information relevant to the scope of your request. As such, parts of 6 documents that are conditionally exempt under subsection 47E(d) have been redacted from the documents.

Section 38 – Documents to which secrecy provisions of enactments apply

A further 5 documents within the scope of your request are exempt from release in full, pursuant to section 38 of the FOI Act. For a document to be exempt under section 38, disclosure of the document, or information contained in the document, must be prohibited under a secrecy provision set out in Schedule 3 to the FOI Act. One of the secrecy provisions set out in Schedule 3 to the FOI Act is section 355-25 of Schedule 1 to the *Taxation Administration Act 1953 (the TAA)*.

Section 355-25 of Schedule 1 to the TAA prohibits me from disclosing protected information to an entity other than the entity to whom the information relates, or an entity covered by subsection 355-25(2) of Schedule 1 to the TAA.

Protected information is defined by section 355-30 of Schedule 1 to the TAA as information which was disclosed or obtained under or for the purposes of a taxation law, which relates to the affairs of

an entity, and which identifies, or is reasonably capable of being used to identify, the entity. The 5 documents referred to above contain protected information about entities for which you are not a 'covered entity', and which I am therefore prohibited from releasing. Specifically, those 5 documents contain protected information about individual taxpayers and where there is no evidence you are a covered entity in respect of those individuals. It is for this reason that 5 documents are exempt from release in full under section 38 of the FOI Act.

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 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.

An application for review by the Australian 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/smartforms/servlet/SmartForm.html?formCode=ICR_10
email: foidr@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

Visit the OAIC website, <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>, for more information about Australian Information Commissioner review.

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/smartforms/servlet/SmartForm.html?formCode=ICCA_1
email: foidr@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001

The Information Commissioner can be contacted on 1300 363 992.

Yours sincerely

M Tonglee

A/g Senior Lawyer
General Counsel
Australian Taxation Office

SCHEDULE OF DOCUMENTS

Our reference: 1-PM9110A

Document #	Pages	Document name/Description	Decision	Exemption
1	1 to 12	FW_ Potential Withholding Variation [SEC=OFFICIAL_Sensitive]	Release in part	S 47E, s 22
2	13 to 16	RE_ Commonwealth Super Corp (CSC), military service invalidity variations [SEC=OFFICIAL]	Release in part	S 47E, S 22
3	17 to 22	RE_ Commonwealth Super Corp (CSC), military service invalidity variations [SEC=OFFICIAL]	Release in part	S 47E , S 22
4	23 to 30	RE_ Commonwealth Super Corp (CSC), military service invalidity variations [SEC=OFFICIAL]	Release in part	S 47E, S 22
5	31 to 41	RE_ Potential Withholding Variation [SEC=OFFICIAL_Sensitive]	Release in part	S 47E, s 22
6	42 to 53	RE_ Withholding variation [SEC=OFFICIAL]	Release in part	S 47E, s 22