



LEGAL, INTERNATIONAL AND REGULATORY AFFAIRS

CASA Ref: F24/23065

Mr Clinton McKenzie

Via email: clintonemckenzie@bigpond.com

Dear Mr McKenzie,

Notice of Decision under the *Freedom of information Act 1982*

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (the Act) on 26 July 2024. Your request was for the following scope:

All emails and other internal correspondence, meeting minutes or other notes taken, relating to the decision to remove, and the implementation of the decision to remove, from the CASA FOI Disclosure Log, hyperlinks to copies of documents disclosed by CASA pursuant to the FOI Act;

within the date range of 1 January 2023 to 26 July 2024. You did not agree to the removal of the names of any CASA staff in the documents, but did agree to the removal of any details of third parties; whose contact details may be located within the documents.

On 29 July 2024, CASA acknowledged your above FOI request and noted that a decision would be made within a 30-day statutory period, with a due date by Friday 23 August 2024. Please note that the acknowledgement email contained a typographical error, as the 30 day statutory timeframe expires on **Monday 26 August 2024**.

Summary of Decision

I am authorised under section 23 of the Act to make decisions in relation to FOI requests.

CASA holds 16 documents (totalling 43 pages) that relate to your request and are listed in the Schedule at **Attachment A**.

I have decided to grant access to one document in full and the remaining 15 documents in part. The reasons for my decision, including the relevant sections of the Act, are set out at **Attachment B**.


Rights of review

If you disagree or are not satisfied with any part of the decision you are still entitled to seek external review by the Office of the Australian Information Commissioner (the OAIC). Further information on how to proceed with an external review can be found in **Attachment C** to this notice.

Further assistance

If you have any questions, please email freedomofinformation@casa.gov.au

Yours sincerely,



Amy George
Freedom of Information Officer
Advisory and Drafting Branch
Legal, International and Regulatory Affairs Division
Civil Aviation Safety Authority

26 August 2024

SCHEDULE OF DOCUMENTS

No.	Pages	Description of document	Decision	Exemption	Comments
1	1 – 2	CASA internal correspondence on disclosure log, dated 28 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
2	3 - 5	CASA internal correspondence on disclosure log, dated 29 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
3	6 – 8	CASA internal correspondence on disclosure log, dated 29 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
4	9 – 12	CASA internal correspondence on disclosure log, dated 29 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
5	13 – 15	CASA internal correspondence on disclosure log, dated 12 April 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i> <i>s22: Irrelevant information outside of scope redacted</i>
6	16 – 18	CASA internal correspondence on disclosure log, dated 14 April 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i> <i>s22: Irrelevant information outside of scope redacted</i>
7	19 – 21	CASA internal correspondence on disclosure log, dated 15 April 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i> <i>s22: Irrelevant information outside of scope redacted</i>
8	22 - 24	CASA internal correspondence on disclosure log, dated 15 April 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i> <i>s22: Irrelevant information outside of scope redacted</i>
9	25 – 28	CASA internal correspondence on disclosure log, dated 15 April 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i> <i>s22: Irrelevant information outside of scope redacted</i>
10	29 – 32	CASA internal correspondence on	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>

		disclosure log, dated 15 April 2024			<i>s22: Irrelevant information outside of scope redacted</i>
11	33 – 36	CASA internal correspondence on disclosure log, dated 15 April 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i> <i>s22: Irrelevant information outside of scope redacted</i>
12	37	CASA internal correspondence on disclosure log, dated 13 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
13	38	Attachment: Table of Departments that provide access to PDFs	Access release	N/A	<i>Documents released in full</i>
14	39 – 40	CASA internal correspondence on disclosure log, dated 15 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
15	41 – 42	CASA internal correspondence on disclosure log, dated 25 January 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>
16	43	CASA internal Teams chat on disclosure log, dated 29 February 2024	Partial release	s47F	<i>s47F: Personal information of CASA staff members redacted.</i>

REASONS FOR DECISION

The reasons for my decision are discussed below.

Information considered

In reaching my decision, I took into consideration:

- Your request dated 26 July 2024;
- The documents that fall within the scope of your request;
- Consultations with CASA officers about:
 - The nature of the documents
 - CASA's operating environment and functions;
- Consultations with relevant third parties;
- Guidelines issued by the OAIC under section 93A of the FOI Act (Guidelines); and
- The *Freedom of Information Act 1982* (the Act).

Reasons for my decision

I am authorised to make decisions under section 23(1) of the Act. My findings and reasons for deciding that the exemptions apply to the documents are discussed below.

Section 22 - irrelevant information

Under section 22 of the Act, CASA is able to give access to a document that would disclose information that would reasonably be regarded as irrelevant to the request for access. In doing so, CASA is able to prepare an edited copy of the document.

For this reason, I have removed information that is outside the scope of your request and relates to another CASA matter as noted in Attachment A for documents numbered 5 to 11.

Section 47F: Conditional exemption - personal information

I have determined that section 47F applies in part to documents numbered 1 to 12, and 14 -16 in relation to the names and contact details of CASA staff members.

Section 47F of the Act provides:

- (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.*

The Act shares the same definition of 'personal information,' as the Privacy Act. Paragraphs 6.123 and 6.124 of the FOI Guidelines provides:

[6.123] Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

[6.124] In other words, personal information:

- is information about an identified individual or an individual who is reasonably identifiable*
- says something about a person*
- may be opinion*
- may be true or untrue*
- may or may not be recorded in material form.*

Unreasonable disclosure

To be conditionally exempt, disclosure of the personal information must be unreasonable.

In deciding whether disclosure of the personal information would be unreasonable, I am required under section 47F(2) of the Act to take into account:

- the extent to which the information is well known
- whether the person that the information is about is known to be associated with the matters dealt with in the document
- the availability of the information from publicly available sources, and
- any other relevant matter.

(see 6.135 of the Guidelines).

I am satisfied that the release of this personal information to you would be unreasonable as:

- the information is not known to you and in the case of documents listed above are not related to you in any way.
- in the case of documents listed above, the information is not well known or in the public domain;
- the release of the information of the documents could potentially be detrimental to the third party involved and
- no public purpose would be achieved through the release of personal information.

Given the above, I find that documents numbered 1 to 12, and documents 14 to 16 to be partially exempt under section 47F of the Act, as the full release of these documents would disclose the names of internal CASA staff where the disclosure of their names would be unreasonable.

I am also satisfied that disclosure would be unreasonable as the information within these documents is not well known to you, and is not available from any public sources. To provide access to this document would constitute an unreasonable disclosure.

The public interest test

As I have identified information to be exempt under section 47F, there is a requirement to consider the application of the public interest test.

Section 11A(5) of the Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Conditionally exempt material must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest as noted in section 11A(5). The Guidelines state:

[6.236] The decision maker must determine whether access to a conditionally exempt document is, at the time of the decision, contrary to the public interest, taking into account the factors for and against disclosure. The timing of the request may be important. For example it is possible that certain factors may be relevant when the decision is made, but would not be relevant if the request were to be reconsidered some time later. In such circumstances a new and different decision could be made

[6.238] To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts of the matter at the time the decision is made.

Application of the public interest test

When weighing up the public interest for and against disclosure under subsection 11A(5) of the Act, I have taken into account relevant factors in favour of disclosure. I have considered the extent to which disclosure would:

- promote the objects of the Act generally; and
- allow a person to access his or her personal information.

Factors against disclosure

Documents held by agencies or ministers often include personal information about public servants. For example, a document may include a public servant's name, work email address, position or title and contact details.

Previous IC review decisions expressed the view that where a public servant's personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose it unless special circumstances exist and release of this information increases transparency and accountability of government consistent with the objects of the Act.

However, this position was considered but not accepted by Deputy President Forgie in Warren; Chief Executive Officer, Services Australia and (Freedom of information)(Warren).¹ Since Warren, it is open to an agency (as per the Guidelines) to consider each proposed disclosure of an employee's personal information on a case by case basis (with reference to 6.135 of the Guidelines).

In doing so, I find that the personal information of certain CASA staff below the senior executive service level, as well as CASA staff's contactable details is not relevant to disclose in advancing the public interest in government transparency and integrity. However, in certain instances, CASA staff details have been disclosed. This would for instance, be with direct communication and correspondence with you where their full name and contact details have been provided to you.

Disclosure would not further promote the objects of the Act and would rather interfere with the individuals' right to privacy. I consider that there is an overwhelming public interest in ensuring that individuals are protected from unreasonable interference with their privacy.

As such, I am satisfied that the documents identified in the schedule as being partially exempt under section 47F of the Act is reasonable.

¹ [2002] AATA 4557.

Disclosure would not further promote the objects of the Act and would rather prejudice the individuals' right to privacy. I consider that there is an overwhelming public interest in ensuring that individuals are protected from unreasonable interference with their privacy.

As such, I am satisfied that the documents identified in the schedule as being partially exempt under section 47F of the Act is reasonable.

INFORMATION ON RIGHTS OF REVIEW**FREEDOM OF INFORMATION ACT 1982****Application for review of decision**

The *Freedom of Information Act 1982* (the Act) gives you the right to apply for a review of this decision.

As the decision is deemed, you are unable to apply for internal review. You may, however, apply for a review of this decision by the Office of the Australian Information Commissioner (the OAIC) under section 54L of the Act.

OAIC Review

If you wish to apply to the OAIC for a review of the decision, you must do so within 60 days of receiving the decision letter. You can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5288, SYDNEY NSW 2001

E-mail: enquiries@oaic.gov.au

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

You can also complain to the OAIC about how CASA handled your FOI request, or other actions the agency took under the FOI Act. Or you can complain to the Commonwealth Ombudsman.

Complaint to the Commonwealth Ombudsman

If you are unsatisfied with the action taken by CASA in relation to your FOI request, you can make a complaint to the Commonwealth Ombudsman. The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072

Email: ombudsman@ombudsman.gov.au

No particular form is required to make a complaint to the Ombudsman. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify CASA as the relevant agency.