

Foi

From: s. 22(1)(a)(ii) @awe.gov.au>
Sent: Thursday, 4 February 2021 2:29 PM
To: Daley, Gemma s. 47F(1)
Cc: Nichol, Amy; foi@awe.gov.au
Subject: RE: FOI third party consultation notice - LEX21488 [SEC=OFFICIAL]
Attachments: LEX-21488 Notification to third party for personal privacy.pdf; Document 1 - marked redactions - LEX-21488.pdf; Document 2 - marked redactions - LEX21488.pdf

Dear Gemma

I am just touching base in relation to the email below and the attached consultation notice and documents.

We would appreciate if you could please let us know Minister Littleproud's views in relation to the consultation notice and the documents attached, by **COB Monday 8 February 2021**.

I note that the decision on access and the documents are due to the FOI applicant by 16 February 2021.

Please do not hesitate to contact me should you have any questions.

Kind regards,

Regards

s. 22(1)(a)(ii)

Principal Legal Officer (A/g) | Information Law | Commercial, Information and Agriculture Legal Practice | Legal Division

Phone: s. 22(1)(a)(ii) | Mobile s. 22(1)(a)(ii) | Email: s. 22(1)(a)(ii) [@awe.gov.au](mailto:foi@awe.gov.au)

Department of Agriculture, Water and the Environment
John Gorton Building, King Edward Terrace, Parkes, ACT, 2600, Australia
GPO Box 858, Canberra, ACT, 2601, Australia
www.awe.gov.au

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From: Foi <foi@awe.gov.au>
Sent: Friday, 15 January 2021 10:07 AM
To: Daley, Gemma s. 47F(1)
Cc: foi@awe.gov.au; s. 22(1)(a)(ii) @agriculture.gov.au>
Subject: FOI third party consultation notice - LEX21488 [SEC=OFFICIAL]

Dear Gemma

Please find attached correspondence from the Department of Agriculture, Water and the Environment addressed to Minister Littleproud in his personal capacity in relation to a Freedom of Information request.

Please do not hesitate to contact me if you have any questions in relation to this.

Kind regards,

Regards

s. 22(1)(a)(ii)

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s. 47F(1)

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s. 47F(1)



The Hon David Littleproud MP

Via email: **s. 47F(1)**

Dear Minister Littleproud

Freedom of Information request – consultation

The Department of Agriculture, Water and the Environment (**department**) received a Freedom of Information request which covers documents containing information about you, in your personal capacity.

The scope of the Freedom of Information request is:

‘any opinion contained within the two documents identified in LEX-3849.’

LEX-3849 is a previous Freedom of Information request received by the department on 2 March 2020. This request sought: ‘all emails to or from the email address **s. 47F(1)** since 1 January 2020 on the Department of Agriculture/Agricultur email server.’ On 27 March 2020 the decision maker decided to refuse access to two documents within scope as they contained personal information and were considered exempt under section 47F of the *Freedom of Information Act 1982 (FOI Act)*.

In relation to the two documents within the scope of LEX-3849:

- document one is considered out of scope of the applicant’s request as it does not contain any opinions (see attached); and
- document two contains opinions and as such most parts of this document are likely to be within the scope of the applicant’s current request (see attached).

Under the FOI Act, if the department receives a request for access to documents containing another person’s personal information and believes the person may reasonably wish to make a contention on the release of the documents, we are required to consult with that person under section 27A of the FOI Act before making a decision on access to the documents.

As such we are consulting with you in your personal capacity for your personal information contained in the documents within the scope of the Freedom of Information request.

A copy of the documents for consultation are **attached**. Please note, the department has marked draft proposed redactions on what may be considered as out of scope material on the two documents.

Opportunity to make a submission

Section 47F of the FOI Act protects personal privacy. The department cannot unreasonably disclose an individual’s personal information.

The term 'personal information' is defined as follows:

'...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.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

The purpose of this letter is to allow you an opportunity to advise the department if you object to the release of the documents. You should tell us if you believe that release of any of the documents would be an unreasonable disclosure of your personal information and provide reasons as to why you believe this.

When providing your reasons, you may like to comment on:

- the nature of the personal information;
- the circumstances in which the department obtained the information;
- the current relevance of the information; and/or
- the extent to which the information is already publicly known.

The FOI Act allows for certain details to be deleted from documents where these are exempt and for the rest of the document to be disclosed. If you do object to the release of the enclosed documents, you may wish to advise the department of any deletion of specific detail from the document that might remove or reduce your objections.

Your comments will be given careful consideration. If a decision is made to release a document, or part of a document, against your wishes, you will be informed of this decision and your review rights before any documents are released.

How to make your submission

You may send your comments by email to foi@awe.gov.au

If we do not receive a response from you by Wednesday 3 February 2021, a decision will be made on the release of the documents without the benefit of your comments. If you require extra time to consider the documents, please do not hesitate to let us know.

Further assistance

If you have any questions, please email foi@awe.gov.au.

Yours sincerely

Freedom of Information
Department of Agriculture, Water and the Environment

Foi

From: Foi <foi@awe.gov.au>
Sent: Friday, 15 January 2021 10:07 AM
To: Daley, Gemma ^{s. 47F(1)}
Cc: foi@awe.gov.au; s. 22(1)(a)(ii)
Subject: FOI third party consultation notice - LEX21488 [SEC=OFFICIAL]
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Dear Gemma

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Please do not hesitate to contact me if you have any questions in relation to this.

Kind regards,

Regards

s. 22(1)(a)(ii)

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s. 47F(1)

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The Hon David Littleproud MP

Via email: **s. 47F(1)**

Dear Minister Littleproud

Freedom of Information request – consultation

The Department of Agriculture, Water and the Environment (**department**) received a Freedom of Information request which covers documents containing information about you, in your personal capacity.

The scope of the Freedom of Information request is:

‘any opinion contained within the two documents identified in LEX-3849.’

LEX-3849 is a previous Freedom of Information request received by the department on 2 March 2020. This request sought: ‘all emails to or from the email address **s. 47F(1)** since 1 January 2020 on the Department of Agriculture/Agriculture email server.’ On 27 March 2020 the decision maker decided to refuse access to two documents within scope as they contained personal information and were considered exempt under section 47F of the *Freedom of Information Act 1982* (**FOI Act**).

In relation to the two documents within the scope of LEX-3849:

- document one is considered out of scope of the applicant’s request as it does not contain any opinions (see attached); and
- document two contains opinions and as such most parts of this document are likely to be within the scope of the applicant’s current request (see attached).

Under the FOI Act, if the department receives a request for access to documents containing another person’s personal information and believes the person may reasonably wish to make a contention on the release of the documents, we are required to consult with that person under section 27A of the FOI Act before making a decision on access to the documents.

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A copy of the documents for consultation are **attached**. Please note, the department has marked draft proposed redactions on what may be considered as out of scope material on the two documents.

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- (a) whether the information or opinion is true or not; and
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When providing your reasons, you may like to comment on:

- the nature of the personal information;
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- the extent to which the information is already publicly known.

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Your comments will be given careful consideration. If a decision is made to release a document, or part of a document, against your wishes, you will be informed of this decision and your review rights before any documents are released.

How to make your submission

You may send your comments by email to foi@awe.gov.au

If we do not receive a response from you by Wednesday 3 February 2021, a decision will be made on the release of the documents without the benefit of your comments. If you require extra time to consider the documents, please do not hesitate to let us know.

Further assistance

If you have any questions, please email foi@awe.gov.au.

Yours sincerely

Freedom of Information
Department of Agriculture, Water and the Environment

Foi

From: s. 22(1)(a)(ii) @awe.gov.au>
Sent: Wednesday, 17 February 2021 1:30 PM
To: Daley, Gemma s. 47F(1)
Cc: foi@awe.gov.au
Subject: Notification of internal review of FOI decision [SEC=OFFICIAL]
Attachments: LEX-21488 decision.pdf

Dear Gemma

This email is to advise you of a request received by the department for internal review of a FOI decision that was notified to the applicant on 16 February 2021. The Department consulted the Minister in his personal capacity about the FOI request.

Details of FOI Internal Review

Applicant: s. 11C(1)(a) - Journalist

Internal Review Request:

‘Can I request an internal review.

The department has failed to undertake third party consultation in relation to the documents under s27A.

Can you please review the decision and apply s27A.’

Date internal review decision is due: 17 March 2021

Original Decision: one document was found within the scope of the request. The decision refused access to that document with information exempt under section 47F(1) of the *Freedom of Information Act 1982* - personal information the disclosure of which would be unreasonable. No documents were released to the applicant.

A new decision-maker within the department will be appointed for the internal review.

Please do not hesitate to let me know if you have any questions.

Kind regards,

s. 22(1)(a)(ii)

Principal Legal Officer (A/g) | Information Law | Commercial, Information and Agriculture Legal Practice | Legal Division

Phone: s. 22(1)(a)(ii) | Mobile s. 22(1)(a)(ii) Email: s. 22(1)(a)(ii) [@awe.gov.au](mailto:foi@awe.gov.au)

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From: s. 22(1)(a)(ii) <[s.22\(1\)\(a\)\(ii\)@awe.gov.au](mailto:s.22(1)(a)(ii)@awe.gov.au)>
Sent: Friday, 12 February 2021 1:38 PM
To: Daley, Gemma <[s.47F\(1\)@Gemma.Daley@s.47F\(1\).gov.au](mailto:s.47F(1)@Gemma.Daley@s.47F(1).gov.au)>
Cc: foi@awe.gov.au
Subject: MO notification - FOI relating to emails - LEX-21488 [SEC=OFFICIAL]

Dear Gemma

This email is to advise you of an FOI decision that was made on 12 February 2021 and will be notified to the applicant by 16 February 2021. The Department consulted the Minister in his personal capacity about this request.

Details of FOI Request and Decision

Applicant: s. 11C(1)(a)- Journalist

Request:

‘Can I please request any opinion contained within the two documents identified in LEX-3849.’

Date decision is due: 16 February 2021

Decision: one document was found within the scope of the request. The decision refuses access to that document with information exempt under section 47F(1) of the *Freedom of Information Act 1982* - personal information the disclosure of which would be unreasonable.

A copy of the decision is attached. No documents are being released to the applicant.

Please do not hesitate to let me know if you have any questions.

Kind regards,

s. 22(1)(a)(ii)

Principal Legal Officer (A/g) | Information Law | Commercial, Information and Agriculture Legal Practice | Legal Division

Phone: s. 22(1)(a)(ii) | Mobile s. 22(1)(a)(ii) | Email: s. 22(1)(a)(ii) [@awe.gov.au](mailto:s.22(1)(a)(ii)@awe.gov.au)

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Mr s. 11C(1)(a)

Via email: s. 11C(1)(a)

Dear Mr s. 11C(1)(a)

Decision on your Freedom of Information request

I refer to your request, received by the Department of Agriculture, Water and the Environment (**department**) on 18 December 2020 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

‘any opinion contained within the two documents identified in LEX-3849.’

My decision

The department holds one document (totalling 3 pages) that relates to your request.

I have decided to **refuse access** to that document.

I note that your request has asked for any opinion contained within the two documents identified in LEX-3849. Document one in LEX-3849 does not contain any opinion and is considered out of the scope of your current request.

Parts of the second document in LEX-3849 are within the scope of your request and subject to this decision. I have decided that those parts of the document are exempt under the FOI Act as the disclosure of information would involve the unreasonable disclosure of personal information.

What I took into account

In reaching my decision, I took into account:

- your request dated 18 December 2020;
- the documents that fall within the scope of your request;
- consultation with third parties about documents which contain information concerning them;
- information about:
 - the nature of the documents; and
 - the department’s operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that the parts of the document that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to that document are discussed below.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to the document.

Section 47F of the FOI Act relevantly 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.'

Personal Information

The term 'personal information' has the same meaning as in section 6(1) of the *Privacy Act 1988* and is defined as follows:

- '...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.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

Paragraph 6.136 of the Guidelines states that the information needs to convey or say something about a person, rather than just identify them.

I find that the document contains personal information, including personal correspondence.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

Paragraph 6.142 of the Guidelines sets out key factors for determining whether disclosure is unreasonable including:

- whether the author of the document is identifiable;
- the documents contain third party personal information;
- release of the documents would cause stress on the third party;
- no public purpose would be achieved through release.

In *FG and National Archives of Australia* [2015] AlCmr 26, other factors considered to be relevant include:

- the nature, age and relevance of the information;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act;
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information; and whether disclosure of the information might advance the public interest in government transparency and integrity.

At paragraph 6.144 of the Guidelines, it references the case of *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, specifically '...if the information disclosure were of no demonstrable relevance to the affairs of the 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.'

I am satisfied that the author of the document is identifiable, it contains third party personal information, and no public purpose would be achieved through release. The disclosure of the third party personal information would be unreasonable as it is correspondence that relates to aspects of an individual's personal affairs and the information is private and not available in full or in part from publicly-accessible sources. I have taken into account the circumstances of the agency's collection and consultation with third parties. I am satisfied that the information

disclosure has no demonstrable relevance to the affairs of the government as it is personal correspondence.

On this basis, I have decided that the personal information included in the document referred to in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI 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.'

When weighing up the public interest for and against disclosure, I have taken into account relevant factors favouring access under 11B of the FOI Act. In particular, I have considered the extent to which disclosure would promote the objects under sections 3 and 3A of the FOI Act.

Although the FOI Act does not list any factors weighing against disclosure, I have considered the relevant factors weighing against disclosure as outlined in the Guidelines. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.

Based on the above factors, I have decided that in this instance, the disclosure of the documents would, on balance, be contrary to the public interest. This is because this personal correspondence is unlikely to promote the objects of the FOI Act as it is unlikely that disclosure would increase public participation in Government processes, promote better-informed decision making, or increase scrutiny, discussion, comment and review of the Government's activities. Furthermore, as the requested document is personal correspondence conducted in the individual's personal capacity, disclosure could reasonably be expected to prejudice an individual's right to privacy.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@awe.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi@awe.gov.au.

Yours sincerely

s. 11C(1)(a)

Amy Nichol
General Counsel
Legal Division
12 February 2021

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Friday, 5 February 2021 11:04 AM
To: Daley, Gemma ^{s. 47F(1)}
Subject: RE: FOI third party consultation notice - LEX21488 [SEC=OFFICIAL]

Dear Gemma

Many thanks for your email and for your time on the phone confirming the Minister's view in his personal capacity is that on document 2 the section 47F exemption should apply to the unredacted parts of the document for personal privacy reasons. As mentioned in the consultation letter sent on 15 January 2021, the remaining parts of document 2 and all of document 1 is considered out of scope under section 22 of the FOI Act.

The decision-maker will proceed to making a final decision by 16 February 2021, taking into account this consultation.

Please do not hesitate to contact me should you have any questions.

Regards

s. 22(1)(a)(ii)

Principal Legal Officer (A/g) | Information Law | Commercial, Information and Agriculture Legal Practice | Legal Division

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Subject: RE: FOI third party consultation notice - LEX21488 [SEC=OFFICIAL] [SEC=UNOFFICIAL]

OFFICIAL

Hi there- this approach is fine with us...
Cheers

From: s. 22(1)(a)(ii) [@awe.gov.au](mailto:s.22(1)(a)(ii)@awe.gov.au)>
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Cc: Nichol, Amy <Amy.Nichol@agriculture.gov.au>; foi@awe.gov.au

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Dear Gemma

I am just touching base in relation to the email below and the attached consultation notice and documents.

We would appreciate if you could please let us know Minister Littleproud's views in relation to the consultation notice and the documents attached, by **COB Monday 8 February 2021**.

I note that the decision on access and the documents are due to the FOI applicant by 16 February 2021.

Please do not hesitate to contact me should you have any questions.

Kind regards,

Regards

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From: Foi <foi@awe.gov.au>

Sent: Friday, 15 January 2021 10:07 AM

To: Daley, Gemma s. 47F(1)

Cc: foi@awe.gov.au; s. 22(1)(a)(ii) [@agriculture.gov.au](mailto:foi@agriculture.gov.au)

Subject: FOI third party consultation notice - LEX21488 [SEC=OFFICIAL]

Dear Gemma

Please find attached correspondence from the Department of Agriculture, Water and the Environment addressed to Minister Littleproud in his personal capacity in relation to a Freedom of Information request.

Please do not hesitate to contact me if you have any questions in relation to this.

Kind regards,

Regards

s. 22(1)(a)(ii)

Principal Legal Officer (A/g) | Information Law | Commercial, Information and Agriculture Legal Practice | Legal Division

Phone: s. 22(1)(a)(ii) | Mobile s. 22(1)(a)(ii) | Email: s. 22(1)(a)(ii) [@awe.gov.au](mailto: @awe.gov.au)

Department of Agriculture, Water and the Environment
John Gorton Building, King Edward Terrace, Parkes, ACT, 2600, Australia
GPO Box 858, Canberra, ACT, 2601, Australia
www.awe.gov.au

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Foi

From: s. 22(1)(a)(ii) @awe.gov.au>
Sent: Friday, 12 February 2021 1:38 PM
To: Daley, Gemma s. 47F(1)
Cc: foi@awe.gov.au
Subject: MO notification - FOI relating to emails - LEX-21488 [SEC=OFFICIAL]
Attachments: LEX-21488 decision.pdf

Dear Gemma

This email is to advise you of an FOI decision that was made on 12 February 2021 and will be notified to the applicant by 16 February 2021. The Department consulted the Minister in his personal capacity about this request.

Details of FOI Request and Decision

Applicant: s. 11C(1)(a)- Journalist

Request:

‘Can I please request any opinion contained within the two documents identified in LEX-3849.’

Date decision is due: 16 February 2021

Decision: one document was found within the scope of the request. The decision refuses access to that document with information exempt under section 47F(1) of the *Freedom of Information Act 1982* - personal information the disclosure of which would be unreasonable.

A copy of the decision is attached. No documents are being released to the applicant.

Please do not hesitate to let me know if you have any questions.

Kind regards,

s. 22(1)(a)(ii)

Principal Legal Officer (A/g) | Information Law | Commercial, Information and Agriculture Legal Practice | Legal Division

Phone: s. 22(1)(a)(ii) | Mobile s. 22(1)(a)(ii) | Email: s. 22(1)(a)(ii) [@awe.gov.au](mailto:s.22(1)(a)(ii)@awe.gov.au)

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Mr**s. 11C(1)(a)**

Via email: **s. 11C(1)(a)**

Dear Mr **s. 11C(1)(a)**

Decision on your Freedom of Information request

I refer to your request, received by the Department of Agriculture, Water and the Environment (**department**) on 18 December 2020 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

‘any opinion contained within the two documents identified in LEX-3849.’

My decision

The department holds one document (totalling 3 pages) that relates to your request.

I have decided to **refuse access** to that document.

I note that your request has asked for any opinion contained within the two documents identified in LEX-3849. Document one in LEX-3849 does not contain any opinion and is considered out of the scope of your current request.

Parts of the second document in LEX-3849 are within the scope of your request and subject to this decision. I have decided that those parts of the document are exempt under the FOI Act as the disclosure of information would involve the unreasonable disclosure of personal information.

What I took into account

In reaching my decision, I took into account:

- your request dated 18 December 2020;
- the documents that fall within the scope of your request;
- consultation with third parties about documents which contain information concerning them;
- information about:
 - the nature of the documents; and
 - the department’s operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that the parts of the document that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to that document are discussed below.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to the document.

Section 47F of the FOI Act relevantly 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.'

Personal Information

The term 'personal information' has the same meaning as in section 6(1) of the *Privacy Act 1988* and is defined as follows:

- '...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.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

Paragraph 6.136 of the Guidelines states that the information needs to convey or say something about a person, rather than just identify them.

I find that the document contains personal information, including personal correspondence.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

Paragraph 6.142 of the Guidelines sets out key factors for determining whether disclosure is unreasonable including:

- whether the author of the document is identifiable;
- the documents contain third party personal information;
- release of the documents would cause stress on the third party;
- no public purpose would be achieved through release.

In *FG and National Archives of Australia* [2015] AlCmr 26, other factors considered to be relevant include:

- the nature, age and relevance of the information;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act;
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information; and whether disclosure of the information might advance the public interest in government transparency and integrity.

At paragraph 6.144 of the Guidelines, it references the case of *Colakovski v Australian Telecommunications Corporation* (1991) 29 FCR 429, specifically '...if the information disclosure were of no demonstrable relevance to the affairs of the 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.'

I am satisfied that the author of the document is identifiable, it contains third party personal information, and no public purpose would be achieved through release. The disclosure of the third party personal information would be unreasonable as it is correspondence that relates to aspects of an individual's personal affairs and the information is private and not available in full or in part from publicly-accessible sources. I have taken into account the circumstances of the agency's collection and consultation with third parties. I am satisfied that the information

disclosure has no demonstrable relevance to the affairs of the government as it is personal correspondence.

On this basis, I have decided that the personal information included in the document referred to in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI 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.'

When weighing up the public interest for and against disclosure, I have taken into account relevant factors favouring access under 11B of the FOI Act. In particular, I have considered the extent to which disclosure would promote the objects under sections 3 and 3A of the FOI Act.

Although the FOI Act does not list any factors weighing against disclosure, I have considered the relevant factors weighing against disclosure as outlined in the Guidelines. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.

Based on the above factors, I have decided that in this instance, the disclosure of the documents would, on balance, be contrary to the public interest. This is because this personal correspondence is unlikely to promote the objects of the FOI Act as it is unlikely that disclosure would increase public participation in Government processes, promote better-informed decision making, or increase scrutiny, discussion, comment and review of the Government's activities. Furthermore, as the requested document is personal correspondence conducted in the individual's personal capacity, disclosure could reasonably be expected to prejudice an individual's right to privacy.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@awe.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi@awe.gov.au.

Yours sincerely

s. 11C(1)(a)

Amy Nichol
General Counsel
Legal Division
12 February 2021