



Australian Government
Attorney-General's Department

FOI15/030; 15/3593

27 April 2015

Mr Alex McKean
Barrister at Law
Sunshine Coast Barristers Chambers
Suite 3, Level 3
57 The Esplanade
Cotton Tree QLD 4558

Dear Mr McKean

Freedom of Information Request FOI 15/030

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Sarah Chidgey, First Assistant Secretary, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 28 February 2015 you requested access to documents relating to Professor Gillian Triggs. Specifically you sought access to:

The relevant time period for the request is 01.09.14 to date

- 1) *Created by Mr Moraitis: File notes, memoranda, emails, or any other documents, relating to Professor Gillian Triggs.*
- 2) *Created by the Attorney-General, Senator the Hon. George Brandis QC:*
 - a) *records of any communications with Mr Moraitis about Prof. Gillian Triggs;*
 - b) *records of communications with the Prime Minister, the Prime Minister's office, or the Department of Prime Minister and Cabinet about:*
 - *Prof Gillian Triggs;*
 - *The HRC inquiry into children in detention.*
 - c) *Mr Moraitis' diary for the period, including details of his travel;*

- d) *Records showing, with respect to the loss of a briefcase, a folder or folders, or particular notes by Mr Moraitis ('the loss'):*
- i) *any notification, report or other communication from Mr Moraitis, or on his behalf,*
 - ii) *steps taken to comply with the security governance guidelines published by the Department, in particular:*
 - *whether the loss has been classified as a major security incident, security incident or security infringement;*
 - *the time and place of the loss;*
 - *the circumstances of the loss;*
 - *the types of official resources suspected to have been lost;*
 - *whether the loss was deliberate or accidental;*
 - *an assessment of the degree of harm done;*
 - *a summary of the short and long term damage done;*
 - *any investigation which is being contemplated, or has begun, into the loss;*
 - *any efforts made by Mr Moraitis, or on his behalf, to locate the lost briefcase;*
 - *any effort made by Mr Moraitis, or on his behalf, to inform Prof Triggs of the loss of notes of a confidential discussion involving Prof Triggs.*

On 12 March 2015 the Attorney-General's Office accepted transfer under section 16(1) of the FOI Act of part of your request relating to documents '*created by the Attorney-General, Senator the Hon. George Brandis QC*'.

On 27 March 2015 you were notified that I intended to refuse access to the documents you requested because the request would have substantially and unreasonably diverted the resources on the department from its other operations under section 24AB of the FOI Act. You were given the opportunity to revise your request before I made a decision.

Between 9 April 2015 and 14 April 2015 you engaged in a request consultation process with the department as set out in section 24AB of the FOI Act. On 10 April 2015 you sent the department a revised request for:

- 1) *For the time period between 1 September 2014 to date:*

Created by Mr Moraitis: File notes, memoranda, emails, or any other documents, relating to Professor Gillian Triggs

- 2) (c) *For the time period between 1 January 2015 to date:*

- i) *entries in Mr Moraitis calendar, whether in electronic form or otherwise, relating to meetings with the Attorney-General;*
- ii) *all booking advices, itineraries, airline tickets or other documents, in electronic form or otherwise related to overseas travel by Mr Moraitis*

- (d) *For the time period from 1 January 2015 to date:- records showing, with respect to the loss of a briefcase, a folder or folders, or particular notes by Mr Moraitis ('the loss'):*

- i) *any notification, report or other communication from Mr Moraitis, or on his behalf, of the loss;*

ii) *steps taken to comply with the security governance guidelines published by the Department, in particular:*

- *whether the loss has been classified as a major security incident, security incident or security infringement;*
- *the time and place of the loss;*
- *the circumstances of the loss;*
- *the types of official resources suspected to have been lost;*
- *whether the loss was deliberate or accidental;*
- *an assessment of the degree of harm done;*
- *a summary of the short and long term damage done;*
- *any investigation which is being contemplated, or has begun, into the loss;*
- *any efforts made by Mr Moraitis, or on his behalf, to locate the lost briefcase;*
- *any effort made by Mr Moraitis, or on his behalf, to inform Prof Triggs of the loss of notes of a confidential discussion involving Prof Triggs.*

After consideration of the number of documents that would fall within the revised scope of your request, I considered the practical refusal reason no longer existed and the department began to process your request as set out above.

On 14 April 2015 you were issued a notice of charges for processing your request, and on 15 April 2015, you agreed to pay these charges. Your deposit was received on 23 April 2015.

With regard to part (1) of your request, I have identified that the Attorney-General's Department has one document that falls within the scope of your request. With regard to part (2)(c) of your request, I identified eleven documents which fell within the scope of your request. With regard to part (2)(d) of your request, I have identified that the Attorney-General's Department has no documents that fall within the scope of your request. I did this by arranging for comprehensive searches of the department's electronic documents management systems. I also made enquiries by email with staff who may have been able to help locate documents within the scope of your request.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

With regard to the documents you requested (set out in the schedule attached), I have decided to grant access to four documents and to grant access to edited versions of eight documents. More information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents identified in the attached schedule, I have decided:

- to grant access in full to documents 2, 3, 5 and 7;

- to grant access in part to documents 1, 4, 6, 8, 9, 10, 11 and 12 with irrelevant matter deleted under section 22 and exempt matter deleted under section 74F (Public interest conditional exemptions – personal privacy).

In addition I found that:

- documents you requested in regards to records showing the loss of a briefcase, a folder or folders or particular notes by the Secretary for the time period 1 January 2015 to 28 February 2015 do not exist (section 24A(1)(b)(ii)) – information about why they do not exist is given below.

Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request
- correspondence between yourself and the department narrowing the scope of your request
- the FOI Act (specifically sections 22 and 47F)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act

The schedule indicates each document to which access is granted in part. My reasons for granting access in part are given below.

Deletion of exempt or irrelevant material (section 22)

Section 22 of the FOI Act provides that:

- (1) This section applies if:*
- (a) an agency or Minister decides:*
 - (i) to refuse to give access to an exempt document; or*
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document modified by deletions, ensuring that:*
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and*
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and...*

I have decided to apply section 22 of the FOI Act in cases where the information does not fall within the scope of your request (irrelevant information). I have considered all the documents identified in the schedule to determine whether a portion or portions of each document could be released using the procedure envisaged in section 22(1)(b) of the FOI Act.

Section 22 provides that if an agency decides that granting access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request and it is reasonably possible to prepare an edited copy of the document by deleting the irrelevant information, then the department should do so.

Therefore where irrelevant information appears in the documents, I have deleted this irrelevant information in order to allow for the release of the balance of the document.

Public interest conditional exemption – personal privacy (section 47F)

Documents 1, 4 and 6 contain material that is conditionally exempt from disclosure under section 47F of the FOI Act. Section 47F states:

- (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 material identified is conditionally exempt under this provision because its release would, in my view, involve the unreasonable disclosure of personal information about certain identified individuals.

The material I have decided to exempt pursuant to section 47F is the personal information of senior officers of this department, including the Secretary, and staff names and reference numbers of a private travel business. The types of information I have exempted include frequent flyer numbers, staff names and individual reference numbers.

The release of this information would, in my view, involve unreasonable disclosure of personal information about those individuals. In deciding that the disclosure would be unreasonable, I have had regard to the matters listed in subsection 47F(2) and I have determined that this material is not well known and is not publicly available.

Subsection 11A(5) of the FOI Act provides that a conditionally exempt document must be disclosed unless its release would be contrary to the public interest. Section 11B of the FOI Act lists the public interest factors favouring access. Of these factors, I consider one to be relevant: promoting the objects of the FOI Act.

Though the FOI Act does not list any specific factors weighing against disclosure, I have identified the following factors against disclosure: the specific harm caused by an unreasonable disclosure of personal information which could reasonably be expected to prejudice the protection of an individual's right to privacy.

In my view, the release of the material would breach the individuals' privacy without any significant countervailing benefits. Public interest factors in favour of disclosure, including the right of the public to access government-held information, are outweighed by the importance of maintaining an individual's right to privacy.

Accordingly I have decided that disclosure of the material would be contrary to public interest.

In accordance with subsection 11B(4) of the FOI Act, I have ensured that no irrelevant factors have been considered in reaching this decision. I am satisfied that material in Documents 1, 4 and 6 is

conditionally exempt under subsection 47F(1) of the FOI Act and that disclosure would be contrary to the public interest.

Documents non-existent (s 24A(1)(b)(ii))

Following the searches outlined above to identify files and documents that fall within the scope of your request, I am satisfied that the department does not have any documents relating to part (2)(d) of your request.

Under section 24A(1) of the FOI Act, an agency may refuse a request for access to documents if:

- (a) all reasonable steps have been taken to find the document; and*
- (b) the agency or Minister is satisfied that the document:*

....

- i) does not exist.*

I note the Secretary is writing to Senator the Hon Ian MacDonald, Chair of the Senate Standing Committee on Legal and Constitutional Affairs, in regards to any evidence regarding the loss of a briefcase. A copy of this letter should be available from the Senate Standing Committee on Legal and Constitutional Affairs in due course.

Outstanding charges

We advised you that the estimated charge for processing your request was \$155.87. You agreed to that charge and we received your deposit of \$38.97 on 23 April 2015.

The actual amount for processing was calculated to be \$145.12. The charge for processing your request is less than the estimated amount because two documents originally thought to be included in the scope of your request were, on subsequent examination, outside the date range of the scope of your request.

An invoice for the outstanding amount, \$106.15, will be sent to you. Following payment of the outstanding charge, the Attorney-General's Department will provide you with the documents I have decided to grant access to via email as discussed.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We 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 Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Privacy Section
Office of Corporate Counsel,
Attorney-General's Department,

3-5 National Circuit
Barton, ACT 2600

Where possible please attach reasons why you believe 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, 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 2999, Canberra ACT 2601

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

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please contact me on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely



Sarah Chidgey

First Assistant Secretary

Attachments

- A. Schedule of documents
- B. Documents 1 - 12