Australian Government
Australian Taxation Office

Attn: James Smith

Our reference: **1-C9KVHAD**
Date: **07/09/2017**

Decision - Freedom of Information request James Smith (RTK) (8 August 2017) 1-C9KVHAD

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

You requested access to:

> "I request documents related to the ten most recent instances where an employee has sought information, advice, guidance, or opinion on their social media use in a private capacity.
> I limit the scope of documents to:
> - the original request from the employee
> - the agency/department's response
> - any follow-up questions and response
> - only those sent to a relevant HR / conduct / social media (or similar) team (rather than managers across all areas of the organisation)
> - where the original request was created in the last 2 years"

Decision and Reasons

I release to you 1 document containing 2 entries. The redacted parts of those entries fall into 2 categories:

- Names of group email addresses being conditionally exempt under section 47E(c) and 47E(d)
- Identifiers of staff (personal identifiers) being conditionally exempt under section 47F.

By "personal identifiers", I mean personal staff names, gender and date and time of request. Group email addresses are those used by a particular group of people within the Agency and are not publicly available. I consider the public interest factors which apply in relation to both conditional exemptions below.

The attached schedule of documents provides a reference to the section of the FOI Act which relate to the redactions as they appear in the documents. Where the same section appears down a page, it has not been repeated in the schedule.

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(a)…;
(b)…;
(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The Guidelines explain that the term 'reasonably be expected' requires the decision maker to consider the likelihood of the predicted effect or damage occurring as a result of disclosure of the document. The Guidelines also explain that the term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'.

Group Emails

Such group emails allow for a systematic workflow for staff. That workflow would be undermined by such release by competing demands. A release of group email addresses could reasonably be expected to result in a flow of emails from readers of the released material to those email addresses. The likely result consequently; an increase in workload, complexity and referrals for those required to process such email, and a delay in the administration of processing of emails for which the mailbox was intended. Responses to correspondence directed to the group email addresses would not be processed in the same way or within the same timeframe.

I consider the group email addresses to be conditionally exempt under section 47E(c) and 47E(d) of the FOI Act.

47F Public interest conditional exemptions—personal privacy
General rule

> (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.

"Personal information" is defined in s 4 of the Freedom of Information Act 1982 by reference to s 6 of the Privacy Act 1988 to mean 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.

Guideline 6.130 identifies that personal information can include a person's name, address and telephone number. The Explanatory memorandum to the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*, pp 60–61 (as discussed in Baptist Union of Queensland – Carinity v Roberts [2015] FCA 1068)) notes that

> "Whether an individual is reasonably identifiable from certain information requires a consideration of the cost, difficulty, practicality and likelihood that the information will be linked in such a way as to identify him or her."

Personal identifiers

I note that you have not provided a personal email or postal address and your request assumes that documents released in relation to this request will be available online. It is possible and may be probable that the identity of the individuals may be ascertainable to co-workers. It is unlikely that staff would make such inquiries if the outcome were not of importance to them; the nature of that importance cannot be assessed in relation to release to you of these documents, by myself. The date and time at which staff sought assistance, their name and gender would tend to identify them to co-workers. In the circumstances, I consider that those personal identifiers are conditionally exempt under section 47F.

Considering section 47F(2), FOI Act, the content redacted is not identified by the terms of the request, and would appear to have no relevance to the substance of the requested documents. The details are not otherwise publicly available and it is not likely that any public purpose would be achieved by their release. The information disclosure would appear to have no demonstrable relevance to the affairs of government.

Public Interest

None of the irrelevant factors listed in 11B(4) of the FOI Act would apply in relation to the conditional exemptions under consideration here.

Weighing the public interest, including those matters in section 11B(3) of the FOI Act, the disclosure may in giving access to the complete document, broadly promote the background contextual information to the document. Release of the redacted material would not advance the objects listed in sections 11B(3)b to 11B(3)(d) of the FOI Act. I consider the factor in favour of disclosure is outweighed by the public interest in refusing access. As outlined above, the details do not appear to be relevant to the substance of the request. Release of the redacted material would be likely to impact on staff morale, and impact on the engagement of members of the public with the agency (equitable access of avenues available to address their concerns). The public interest is served by the agency maintaining a variety of defined gateways, for members of the public to address particular types of questions.

In relation to the public interest factors in section 11B, 11A and section 3, I consider that any factors favouring release would be outweighed by the factors favouring refusal (such as security, workload resourcing, and the confidentiality sought by correspondents). The substance of any documents falling within the request description would not appear to benefit the public, be in the interest of the public and would not be of common concern or relevance to a substantial section of the public. None of the irrelevant factors listed in section 11C, FOI Act have been taken into account.

Material taken into account

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

- The description defining those documents to which you seek access
- The documents reviewed in relation to your request
- Documents on the ATO Information disclosure log – 1-7Y60J39 pages 24-35, and 1-C9KVHJC.
- the FOI Act (specifically sections 23(1), 47E(c), 47E(d), 47F and 11B)
- Work Health and Safety Act 2011, sections 19(2), 3(1)(a) and 3(2), 28, 191 and Division 5
- My approval and authorisation under section 23, FOI Act 1982
- My position as an authorised decision-maker in General Counsel
- Office of the Australian Information Commissioner, Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (guidelines)

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 ATO for an internal review of my decision. The internal review application quoting our reference above, must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: **FOI@ato.gov.au**
post: Australian Taxation Office,
General Counsel,
GPO Box 4889, Sydney NSW 2001.

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. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

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 5218, Sydney NSW 2001
in person:	Level 3, 175 Pitt Street, Sydney NSW

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

MMcCafferty
FOI Decision-maker,General Counsel, ATOC
Australian Taxation Office

Doc Number	records	Description of document	Redaction Section	Redaction Comments	Decision
1	1	Instances	s47F	personal privacy	Released in part
			s47F	personal privacy	
			s47F	personal privacy	
			s47F	personal privacy	
	2		s47F	personal privacy	
			s47F, s47E	personal privacy, operations of an agency	
			s47F, s47E	personal privacy, operations of an agency	