



Australian Government

Fair Work Building
& Construction

Additional 2016-17

Education and Employment Legislation Committee

Tabled doc #: 68

Tabled by: Cameron, Senator

Date: 2-Mar-17

28 November 2016

By email: [REDACTED]

Dear Mr [REDACTED]

Freedom of Information dated 28 October 2016 – Decision

1. I refer to your email dated 28 October 2016 which sought access to a document under the *Freedom of Information Act 1982* (Cth) (**the FOI Act**). For convenience I refer to this email request as the **FOI request**.
2. By return email, Fair Work Building & Constructions (FWBC) acknowledged the receipt of the FOI request on 2 November 2016, and informed you that under section 15(5) of the FOI Act the relevant period FWBC has to deal with a request is 30 days from the date the request was received.

FOI Authority and decision

3. My authority to make an FOI decision comes from a delegation made by the Director of the Fair Work Building Industry Inspectorate on 21 September 2016. The delegation is accessible on FWBC's website.
4. In making this decision I have had regard to relevant materials including the terms of the request, the FOI Act, relevant parts of the FOI Guidelines as published by the Office of the Australian Information Commissioner (OAIC) (**the Guidelines**), and relevant jurisprudence concerning the FOI Act.
5. One document matches the description of the FOI request (**Document 1**), which is attached along with this decision.
6. I have determined the document is an exempt document for the purposes section 37 of the FOI Act. However, I have decided to release to you an edited copy of Document 1 under section 22 of the FOI Act. My reasons for decision for the partial release of Document 1 are set out below.

Reasons for decision

7. The FOI seeks a copy of the Director of the Fair Work Building Industry Inspectorate's (Director) "Microsoft Outlook Calendar" for Wednesday 19 October 2016".
8. Document 1 is a copy of the Director's "Microsoft Outlook Calendar" for the date of 19 October 2016.
9. Within the calendar entry, there are two items entered:
 - a. "Senate Estimates".

b. "Accommodation", which includes a venue and a booking reference.

10. Section 37(1) states:

37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
- (c) endanger the life or physical safety of any person.

- 11. For the purposes of my decision, subsection 37(1)(c) is the applicable provision of the FOI Act.
- 12. On 19 October 2016, the Director appeared before a Senate Committee in an Estimates hearing in Canberra. The Director travelled to Canberra in order to appear before the Committee. When traveling to Canberra the Director stays in public accommodation.
- 13. The Director holds a statutory office under the *Fair Work (Building Industry) Act 2012* (Cth). His functions include commencing civil penalty litigation against individuals and bodies corporate. As a direct result of undertaking his functions, the Director has, on occasion, been subject to threats and abuse.
- 14. In circumstances where the Director regularly stays at public accommodation while travelling interstate in his official capacity, it is necessary to have regard to personal safety.
- 15. As such, I have determined that if Document 1 was disclosed in its entirety, that is, to identify where the Director stays when travelling to Canberra, there is a reasonable basis to expect that such disclosure may endanger the physical safety of the Director.
- 16. In *Dreyfus and Attorney-General (Commonwealth of Australia) (Freedom of information)* [2015] AATA 995 at paragraph 57, Jagot J made the following observation in relation to substantially similar information contained within an electronic calendar entry:

In any event, as anticipated, by far the majority of entries relating to meetings disclose only a name and sometimes an organisation. As also anticipated, there are location references (albeit not specific) which might call for deletion based on personal safety concerns in which event s 22 is engaged. (emphasis added)

17. I therefore find that Document 1 is exempt under section 37(c) of the FOI Act.

Section 22 of the FOI Act

18. Section 22 of the FOI Act provides:

(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

(c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:

- (i) the nature and extent of the modification; and
- (ii) the resources available to modify the document; and

(d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

The agency or Minister must:

- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
- (b) give the applicant access to the edited copy.

- 19. I have determined that it is possible for FWBC to release an edited copy of Document 1 without compromising the personal safety of the Director.
- 20. The disclosure of information concerning the locations where the Director may stay while travelling, whilst performing official duties, may put at serious risk the ability of FWBC to manage the personal safety of the Director.
- 21. However, having regard to the obligation imposed by section 22 of the FOI Act, I have determined that an edited copy of Document 1, that removes the limited exempt information, will appropriately relieve the concerns expressed and allow FWBC to facilitate the broader objects of the FOI Act.
- 22. I therefore have decided that an edited copy of Document 1 is to be disclosed under section 22 of the FOI Act.

No Charges

- 23. I confirm that no charges apply to the FOI request.

Internal Review and Complaints

- 24. I am not the principal officer of FWBC.
- 25. As a result, you are entitled to seek an internal review of the decision. You have 30 days from the date of this letter to seek an internal review application. You may do so in writing to: **Freedom of Information (FWBC)**, at either of the following contact addresses:

By post:
GPO Box 9927 MELBOURNE VIC 3001 Australia

By email:
foi@fwbc.gov.au

26. You may also submit an information review request to the Office of the Australian Information Commissioner (OAIC) about the processing of your FOI request. More details about such a process can be accessed from the OAIC's website: <http://www.oaic.gov.au/>
27. If you have any questions about this matter, please send them to foi@fwbc.gov.au.

Yours sincerely,



Ben Vallence

Fair Work Building & Construction

Document 1

19 October 2016

Search All Calendar Items (Ctrl-E)

19

Wednesday

Senate Estimates

6 am

7 00

8 00

9 00

10 00

11 00

12 pm

1 00

2 00

3 00

4 00

5 00

Accommodation: [REDACTED]
Booking Ref: AOGVBK2603

6 00

7 00

8 00

9 00