



Australian Government
Department of Finance and Deregulation

Reference: FOI 13/03
Contact: Sue Copley
Telephone: (02) 6215 3267
e-mail: FOI@finance.gov.au

Mr [REDACTED]

Email: [REDACTED]

Dear Mr [REDACTED]

Freedom of Information Request – FOI 13/03

I refer to your email dated 7 January 2013 to the Department of the Prime Minister and Cabinet (PM&C) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

...information under the FOI Act in relation to traffic infringements evidently incurred by the driver(s) of the Prime Minister's private government funded car during 2012.

Please provide me the names of the drivers, together with the dates, places and nature of each offence. I also request details of payment of those fines - by whom, when and any loss of demerit points accredited to each specific driver.

PM&C transferred your request in full to the Department of Finance and Deregulation (Finance).

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

I have decided to release five (5) documents in part, with material exempted on the grounds of section 47F (personal information) or because it is irrelevant redacted under section 22 of the FOI Act. I have decided not to release the telephone number, address and date of birth of a third party if that information is not already publicly available. In all cases, I have decided not to release the driver's licence numbers and registration details of the vehicle.

The documents are identified in the Schedule at [Attachment A](#).

Reasons for Decision

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- consultations with third parties undertaken in accordance with the FOI Act and submissions made by those third parties;
- the relevant provisions of the FOI Act; and
- Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982* (FOI Guidelines).

Appeal Rights

My decision relating to access is set out below. As a preliminary matter, as third parties have objected to the release of certain documents, I am required, in accordance with subsection 27A(5) of the FOI Act, to advise those parties of my decision to release the documents.

Affected third parties have contended that the disclosure of their personal information would be unreasonable and objected to release of the documents. The affected third parties have the opportunity to seek a review of the decision either by Finance or the Office of the Australian Information Commissioner (OAIC). The third parties have 30 days in which to seek review or lodge an appeal.

The documents that I have decided to release cannot be provided to you until the time period for lodging a review has expired. However, if the third parties lodge an internal review or appeal to the OAIC, documents cannot be provided to you until that review or appeal has been completed.

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act allows for the deletion of exempt or irrelevant matter from a document that may allow for an edited form of the document to be released. I have decided that edited copies of certain documents can be released to you under this category. Accordingly, I have decided to provide you with access to five (5) documents with the exempt and irrelevant information redacted.

A copy of section 22 is at [Attachment B](#).

Irrelevant material

The redacted information within the documents contains material that is irrelevant to your request. Specifically, the personal details of junior Finance staff, LeasePlan employees and the personal details of witnesses to the statutory declarations are considered irrelevant to your request.

Exempt material

The redacted information within the documents contains material that I have determined to be exempt under provisions of the FOI Act. Specifically, the relevant exemption provision is section 47F personal privacy.

Section 47F – Personal Privacy

In so far as is relevant, section 47F of the FOI Act states that:

47F (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).*

A copy of section 47F is at Attachment C.

In addition, under section 11A, access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

For information to be conditionally exempt, I must first be satisfied that the information is personal information. If the documents are one to which personal information applies, I must then address the issue of whether it would be unreasonable to disclose the personal information.

Personal Information

Section 4 of the FOI Act provides a definition of ‘personal information’. It is defined as *‘information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’*.

The FOI Guidelines confirm, at paragraph 6.116, that personal information can include a person’s name, date of birth and address. I am also satisfied that the registration number of the vehicle and the driver’s licence number cited in the documents is personal information.

Whether Disclosure Unreasonable

In determining whether disclosure of the personal information would be unreasonable, I must consider the following factors:

- the nature of the information,
- the circumstances in which the information was obtained,
- the current relevance of the information,
- the stated object of the FOI Act to facilitate and promote the disclosure of information,
- the extent to which the person concerned is a public figure and the relationship of the information to that public status,
- the extent to which the information is well known or already a matter of public knowledge or readily available to the public,
- whether there was any expectation of confidentiality, and
- whether the information would provide information on the workings of government.

Having taken these matters into consideration, I am satisfied that the documents identified in the Schedule contain matter that would involve the unreasonable disclosure of personal information about a person.

With the exception of the telephone number, address and date of birth of one third party which is already a matter of public knowledge, I have decided that the disclosure of third party names, licence number, date of birth and addresses would involve the unreasonable disclosure of the third parties’ personal information. I have also decided that the disclosure

of the registration number of the private-plated vehicle would be an unreasonable disclosure of personal information.

Public interest

Having formed the view that the documents are conditionally exempt under section 47F, I am now required to consider whether disclosure of the documents would be contrary to the public interest.

In accordance with section 11B(3) of the FOI Act, I have considered the following factors favouring disclosure of the document:

- *Release of the document(s) would promote the objects of the Act:* in considering that this is a relevant public interest consideration, I note that the release of the document(s) would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible.
- *Inform Debate on a Matter of Public Importance:* The documents would inform debate on a matter of public importance, namely, the use of entitlements by Members of Parliament. The vehicles that are the subject of this request are at all times, including at the time the infringement notices are incurred, publicly funded vehicles. The vehicles are never the property of the custodian of the vehicle or driver and are funded by tax payers. As such, the public has an interest in the manner of use of the vehicles.
- *Promote Effective Oversight of Public Expenditure:* Entitlements by Members of Parliament are funded by tax payers and the release of the documents could promote effective oversight of public expenditure. The fact that the vehicles are at all times vehicles that are paid for from public expenditure promotes the argument that the information regarding the custodian of the vehicle at the time an infringement notice is incurred should be released as it promotes effective oversight of public expenditure. However, releasing the date of birth of some third parties, the driver's licence numbers, vehicle registration numbers, personal addresses and phone numbers of the individuals in the documents would not necessarily further promote this objective.

I have also considered a number of factors weighing against disclosure, including an individual's right to privacy. The FOI Guidelines relevantly provide that such factors include where access:

- *could reasonably be expected to prejudice the protection of an individual's right to privacy:* Consideration of an individual's right to privacy is a strong one and compelling reasons need to exist in order to override that right. I note that in general terms information about the use of publicly funded vehicles has previously been released and as such this diminishes the argument that the information should not be released. The argument in support of the right to privacy is also diminished by the fact that the vehicles are at all times vehicles that are paid for from public expenditure. The information regarding the custodian of the vehicle at the time that an infringement notice is incurred is information that is intended to remain confidential.

Releasing the names of the custodians of the vehicles at the time an infringement notice is incurred may inform debate on a matter of public importance and promote effective oversight of public expenditure. However, in my view, releasing the date of birth of some third parties, the driver's licence numbers, vehicle registration numbers, personal addresses and phone numbers of the individuals in the documents would go no further towards informing debate on the expenditure of public funds or policy position.

- *could reasonably be expected to harm the interests of an individual or group of individuals:* release of this information may cause some stress to the individuals concerned, the fact that the vehicle is at all times paid for from public expenditure and is not the property of the custodian of the vehicle diminishes the persons expectation that this information would remain confidential. In my view disclosure of the registration number of the private-plated vehicle is not publically known, and its disclosure would raise security concerns for the persons driving the vehicle.

Taking into account the matters listed above against each of the relevant documents, I have determined that:

- i. the factors in favour of disclosure of the names of the third parties who are the custodians of the vehicle outweigh factors against disclosure;
- ii. where the telephone number, address and date of birth of a third party is publicly available information the arguments in favour of disclosure outweigh arguments against disclosure; and
- iii. the factors against disclosure of the driver's licence numbers, registration details of the vehicle, date of birth and address (where it is not publicly available) of a third party outweigh the factors in favour of disclosure.

Accordingly, I have determined that the parts of the five (5) documents that have been redacted are exempt under section 47F of the FOI Act.

Charges

On 21 January 2013, Finance sent you an estimate of charges (\$100.10) in relation to the processing of your request.

I have reviewed the estimate of charges provided to you and confirm that the estimated cost is a true account of the actual time spent on your request.

On 30 January 2013, you authorised the Department to deduct \$100.10 from your credit card as payment of the charges in full.

Upon the expiration of the third party appeal rights the documents will be forwarded to you.

Review and Appeal Rights

You are entitled to request an internal review of my decision. Your appeal rights are set out in Attachment D.

As noted above, as affected third parties have contended that the disclosure of their personal information would be unreasonable and objected to release of some of the documents, those third parties have 30 days in which to seek review or lodge an appeal. The documents that I have decided to release cannot be released to you until this time period has expired, or where

the third parties lodge an internal review or appeal to the OAIC, until that review or appeal has been completed.

Publication

The FOI Act requires Commonwealth agencies to publish:

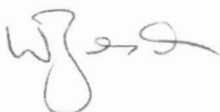
- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act; and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log (www.finance.gov.au) as soon as possible after they are released to you, usually 1 – 2 working days.

Further Assistance

Should you have any queries concerning this matter, please do not hesitate to contact Ms Sue Copley on the contact details indicated above.

Yours sincerely



Warren Benson
Director
Entitlements Management Branch
8 March 2013

SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. 13/03

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision*
1	15/03/2012	5	Australian Capital Territory Chief Police Officer	Leaseplan	Infringement Notice Statutory Declaration Email Fax	D s47F
2	05/04/2012	3	Australian Capital Territory Chief Police Officer	Leaseplan	Infringement Notice Statutory Declaration Fax	D s47F
3	19/04/2012	4	Office of State Revenue	Leaseplan	Infringement Notice Statutory Declaration Email	D s47F
4	29/08/2012	4	City of Melbourne	Leaseplan	Penalty Reminder Notice Statutory Declaration Email	D s47F
5	11/01/2013	5	Office of State Revenue	Leaseplan	Penalty Notice Statutory Declaration Email	D s47F

* R = Release, D = Release with Deletions or E = Exempt

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (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

- (2) 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.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

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;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).



Australian Government

Department of Finance and Deregulation

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance and Deregulation (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting to and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and

ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC.

However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information Commissioner

GPO Box 2999

CANBERRA ACT 2601

Email: enquiries@oaic.gov.au

Fax: 02 9284 9666

In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au).

Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442

CANBERRA ACT 2601

Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator

Legal Services Branch

Department of Finance and Deregulation

John Gorton Building

King Edward Terrace

PARKES ACT 2600

Phone: 02 6215 1783

Email: foi@finance.gov.au

Website: www.finance.gov.au/foi/foi.html