



# ***PS LA 2005/6 - Releasing employee names under the Freedom of Information Act 1982***

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# Releasing employee names under the *Freedom of Information Act 1982*

This Law Administration Practice Statement gives you principles to follow when deciding whether to release a tax officer's name under the FOI Act.

*This practice statement is an internal ATO document, and is an instruction to ATO staff.*

*Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

## 1. What this practice statement is about

This practice statement provides guidance to decision-makers on the general policies and practices about releasing a tax officer's name under the *Freedom of Information Act 1982* (FOI Act).

You should consider these points whenever making a decision about releasing documents under the FOI.

See sections 4 and 5 of this practice statement for more detail.

## 2. Who can make a decision about releasing a name under freedom of information (FOI)?

Only an authorised FOI decision-maker can make a decision about releasing or exempting material under FOI. Authorised FOI decision-makers are members of the ATO General Counsel in the ATO Corporate business line.

### *Applying the policies*

If you think that an exemption applies to a tax officer's name you will need to consider whether you need to consult the named officer before claiming the exemption and deleting their name from the documents to be released.

If the 'physical safety' or 'agency operations' exemptions are clearly appropriate, consultation may not be necessary.

If the 'personal privacy' exemption is to be used, it may be appropriate to consult the named officer.

See section 6 of this practice statement for more detail.

## 3. What is the general policy about releasing documents containing the names of tax officers under FOI?

Generally, names appearing in documents are released when the documents are requested under FOI, except where:

- the names are irrelevant to the request (section 22), or
- there is an exemption based on:
  - an officer's physical safety being endangered (subsection 37(1)(c))
  - an officer's physical safety being endangered (subsection 37(1)(c))
  - the operations of the ATO being adversely affected (subsection 47E(d))
  - an officer's right to personal privacy being breached (section 47F)
  - the possibility of any of these arising from a cumulative effect of public and released information (the 'mosaic effect').

## 4. The relevance of the name to the request

The main test for a section 22 exemption is whether the name can be reasonably regarded as irrelevant to the request. This would be rare. There is no exemption provision for redacting the name of an officer just because they were not:

- actively involved in a matter
- dealing directly with the subject matter of the request.

However, the terms of a request may be so specific that they do not cover the name of the officer mentioned in the relevant documents. The applicant may also have expressly excluded the names of officers from the scope of the request.

## Example

A request for **only** 'the amount paid by the ATO for a particular consultant's report'. The document may contain the name of the officer who approved the payment. The officer's name is irrelevant to that request, and may be deleted under section 22 on that basis.

## 5. Exemptions

Because of our work in some sensitive and high-risk areas of tax compliance, it is prudent to take steps to protect the identity of some officers. This is done using the relevant exemptions under the FOI Act.

A range of possible exemptions can be claimed, depending on the circumstances. These are discussed below.

### Physical safety – subsection 37(1)(c)

You may claim an exemption if the disclosure of information would 'endanger the life or physical safety' of an officer.

This includes circumstances where the applicant has made an actual threat, or where an officer may reasonably perceive a threat to their safety.

You do not need to wait for each individual to suffer actual threats of harm from the applicant. It is sufficient to exempt names if there has been:

- a threat of harm to others working in a similar way
- a threat of harm to others after a disclosure of similar information
- if there is a real possibility that harm is a consequence of disclosure judging from the attributes of the person making the request (for example, if they have a history of violent or threatening behaviour).

You must clearly document the basis for your decision to exempt material for this reason. There must be cogent evidence that there is real fear of danger. The threat of verbal abuse is not sufficient.

### The operations of the agency – section 47E

You may exempt a name from a document where its disclosure would, or could reasonably be expected to, have a 'substantial adverse effect' on the agency's ability to:

- manage or assess its personnel
- properly and efficiently conduct its operations.

This may be applicable in requests from ATO staff members for documents containing the names of other ATO staff members.

Note: this is a conditional exemption and access must generally be given to a conditionally exempt document unless giving access to the document at that time would be contrary to the public interest.

See the FOI Guidelines issued by the Office of the Information Commissioner (OAIC) for more information on:

- 'operations of agencies' – see paragraphs 6.113–6.123
- public interest considerations – see paragraphs 6.1–6.28.

### Personal privacy – section 47F

In some circumstances, you may exempt material about an officer to protect their privacy. This section is not commonly used, but it covers material which, if released, would result in 'an unreasonable disclosure of personal information' about an individual.

Note: this is also a conditional exemption and access must generally be given to a conditionally exempt document unless giving access to the document at that time would be contrary to the public interest.

The factors, as outlined in paragraph 6.140 of the FOI Guidelines, to consider when deciding an 'unreasonable disclosure' of personal information are:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be/to have been, associated with the matters dealt with in the document
- the availability of the information from publicly accessible sources
- any other matters the agency considers relevant.

The disclosure of an officer's name is not usually considered to be an unreasonable disclosure of personal information. The OAIC guidelines in paragraph 6.153 state:

*Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties.*

There are, of course, cases where it could be appropriate to redact tax officers' names. The names of those working in sensitive and high-risk areas, who generally use pseudonyms when dealing with

taxpayers, may require extra protection of their privacy. These decisions should be made on a case by case basis.

In addition, material may be exempted where:

- it is reasonable to assume that it could be combined with other information in ways that would lead to personal information of officers being revealed and accessible (mosaic effect)
- an FOI request seeks, or has the effect of seeking, a list of names of officers by reference to personal characteristics, such as gender, age or location
- the context in which the name of the officer, or other personal information appears, does not relate to their official capacity (that is, the document mentions that an officer is on leave and goes on to detail a medical reason for the leave, the medical reason could reasonably be redacted as 'personal information')
- a personal mobile phone number is included in an official document for the convenience of a colleague. Work phone numbers however will not generally be exempt.

#### *Example of the mosaic effect*

The Commissioner's Annual Report makes it clear that one State has a large capital city office, and another site where only three people worked.

An FOI request for details of all officers in the State not based in the capital city would effectively identify the three officers.

Putting the information from the report with the FOI request would result in an unreasonable disclosure of the three officers' personal information. The information would therefore be exempt.

## **6. Applying the policies**

### *When to consult with the named officer*

It is neither practical nor mandatory that you consult with every officer named in material subject to an FOI request, but you may need to consult in some cases.

In cases where it is obvious that there are particular sensitivities, or we have been advised of particular sensitivities by the business line providing the documents, it may be appropriate to consult.

### *Privacy and 'reverse FOI' under section 27A*

You may propose to provide information, including a name, to an FOI applicant, but have reason to believe that an officer might reasonably contend that this

would be an unreasonable disclosure of their personal information under section 47F.

Usually a phone call to the named officer will clear this up. If, in conversation, the officer advises that their name should not be released then follow the process in section 27A to give them an opportunity to make a submission. You must take any submission into account.

Take particular care when the officer affected works in, or is connected with, sensitive, high-risk compliance work.

### *Consultation process*

It is not ordinarily appropriate to disclose the identity of the FOI applicant to the officer you are consulting. However in some circumstances it may be necessary to do so in order to gather enough information from the officer to make a decision about their safety or privacy.

As a matter of courtesy, try to inform the officers named in relevant documents if the circumstances of the release may be particularly contentious. Where practicable, do this before the release. This might not be necessary or practical in some cases.

### *Further examples*

- An email relevant to a request contains a signature block showing an officer's name, work location and work phone number.

As a general rule, this information is not considered to be an unreasonable disclosure of personal information so would not be exempt. Consider whether any special circumstances may apply.

- An email contains information about when a staff member is planning to take leave.

Consider whether the information is relevant to the request. If it is relevant, consider whether the information is exempt under section 47F as being an unreasonable disclosure of personal information.

- A request is made by a third party for an officer's performance data.

Consult with the officer involved. This is likely to be considered to be an unreasonable disclosure of personal information.

### *Releasing edited material*

A document is not exempt just because it contains exempt material. Section 22 requires documents to be released with irrelevant or exempted material deleted. Such documents are released in part.

### ***Orders to release***

The OAIC, AAT or a court may direct the ATO to produce documents showing officers' names, even where exemption under FOI has been claimed. This may happen if exemption under FOI is successfully contested in the AAT or a court.

### **7. More information**

For more information, see:

- [Freedom of Information Act 1982](#)
- [FOI guidelines, issued by the OAIC](#)
- [Freedom of information disclosure log \(ATO website\)](#)
- [Freedom of information \(FOI\) request – individuals and businesses \(ATO website\)](#)

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