

Text of email received by Honest History/Heritage Guardians from War Memorial, 31 October 2022

Request under the Freedom of Information Act 1982 for access to documents

1. I refer to your request under the *Freedom of Information Act 1982* (FOI Act), in which you sought access to the following:
 - *copy of Minutes (and/or other record of discussion and decision) of the War Memorial Council insofar as they relate to the decision mentioned by Dr Nelson, Chair of Council, in Press Conference at the Memorial, 29 September 2022, including any minuting of discussion as well as of the decision itself.*

Authority to make this decision

2. I am the authorised decision-maker for the purposes of section 23 of the FOI Act and this letter gives notice of my decision.

Material taken into account

3. I have taken the following material into account in making my decision:
 - I. the terms of your request.
 - II. the documents relevant to the request.
 - III. the FOI Act.
 - IV. the Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).
 - V. section 47C of the FOI Act.

Searches

4. In processing your request, I requested the relevant staff to search our corporate information systems and records to identify the documents related to your request.
5. Having regard to your request and the types of documents that may fall within the scope of that request, I am satisfied that the searches conducted were thorough and all reasonable steps have been taken to locate the documents relevant to your request.
6. The **Schedule of Documents** (attached) outlines the documents that were located as falling within the scope of your request.

Decision

7. I have decided to refuse access to document 1 in full and part release document 2 as the both documents contain material that is conditionally exempt under Section 47C of the FOI Act.
8. Detailed reasons for my decision are set out below.

Reasons for Decision

Section 47C: Public Interest conditional exemptions – Deliberative processes

9. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclosure deliberative matter relating to the deliberative processes involved in the functions of an agency.

“Deliberative processes” includes opinion, advice or recommendation obtained, prepared or recorded or consultation or deliberation that has taken place, in the deliberative processes of an agency.
10. Document 1 contains exchange of opinion, advice, recommendations, a collection of facts, interim decisions and recommendations. The document contains opinions and recommendations of executive/council level staff within the Memorial and considerations regarding current and future Memorial functions and processes.

11. Part of document 2 contains deliberative matter in the nature of advice, opinions and recommendations involved around deliberative processes of the Memorial and Frontier Violence. The document contains information through thinking processes of reflection and opinions of the Memorial in considering Frontier Violence in its current and future functions. It can be noted that this information is in the nature of weighing up competing arguments and evaluating considerations and discussions in relation to Frontier Violence. I am satisfied that the material redacted contains deliberative material and is conditionally exempt under section 47C of the FOI Act.
12. I am further satisfied that the factors set out in subsection (3) do not apply in this instance.
13. As noted above, I have decided that both documents contain information that is conditionally exempt under section 47C of the FOI Act.

Access to a conditionally exempt document must generally be given unless it would be a contrary to the public interest to do so. Please see below my reasoning to whether disclosure of the information would be contrary to the public interest.

Section 11B: Public Interest exemptions

14. Under Section 5 of the FOI Act, access must be given to a conditionally exempt document unless access to the document at the time would, on balance, be contrary to the public interest. In considering the public interest test, the FOI Guidelines make the distinction between something that is serious concern or benefit to the public, and something merely of interest to the public or an individual.
15. I have not considered any factors deemed to be irrelevant to determining whether access would be in the public interest, as specified in section 11B(4) of the FOI Act.
16. In order to assess whether release of the conditionally exempt material would be contrary to the public interest, I have considered the following factors which favour disclosure:
 - (a) promotion of the objects of the FOI Act;
 - (b) inform debate on a matter of public importance; and
 - (c) promotion of the effective oversight of public expenditure
 - (d) allow a person to access his or her own personal information

Having regard to the above, access to the documents would promote the objects in section 3 of the FOI Act, and the release of this information will inform debate on a matter of public importance. Through recent media reports, Frontier Violence and the Memorial's position of displaying Frontier Violence is considered a matter of public importance. It can also be noted that the release of the documents would enhance the scrutiny, discussions and review of decisions made at the Memorial which would be in favour of the public interest.

17. In comparison considering the public interest factors against disclosure of the conditionally exempt material, would disclosure information that could reasonably prejudice free and frank advice, opinion and recommendations to engage in open discussions on sustainable and sensitive matters in relation to the Memorial's functions.
18. Section 47C(2) provides that "deliberative matter" does not include purely factual material. I am satisfied that the deliberative material is not purely factual in nature.
19. It can also be noted that the information in the documents could reasonably disclose deliberative matter relating to processes that are undertaken by the Memorial to consider whether and how to make or implement any future decisions.
20. The conditional exemption of deliberative processes does not require an assessment of whether harm would result from disclosure. The only consideration is whether the document includes deliberative matter.
21. Taking the above into consideration, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure. Therefore, I am satisfied for the above reasons that it would be contrary to the public interest to withhold the information identified as conditionally exempt under section 47C of the FOI Act.

Release of documents

22. In accordance with section 20(2) of the FOI Act, access to the document will be given with conditional exemptions as outlined in my Decision above. The requested document will be provided as an electronic copy (attached).

Charges

23. Section 29 of the FOI Act allows for the imposition of charges for providing access to a document. These charges may be applied or waived at the discretion of the agency.

I have exercised my delegation to waive all charges associated with this request.

Review Rights

24. Under the FOI Act you may seek a review of my decision through:

- I. an internal review that is conducted by the Australian War Memorial – see Part VI of the FOI Act; or
- II. a review by the Information Commissioner - see Part VII of the FOI Act.

Internal Review

25. If you wish to seek an internal review, you must apply to the Australian War Memorial within 30 days after the day you are notified of this decision.

26. An application for internal review of the decision made must be made in writing. No particular form is required but it is helpful if you set out in the application the grounds on which you consider that the decision should be reviewed. Your application for internal review should be sent to:

foi@awm.gov.au

Attn: Ms Leanne Patterson

Assistant Director, Branch Head Corporate Services

Review by the Information Commissioner

27. Alternatively, you may seek a review of my decision by the Information Commissioner.

28. The option to seek an internal review (see above) does not prevent you from seeking a review by the Information Commissioner at a later stage - this is because the Information Commissioner can also review an internal review.

29. If you wish to seek a review of my decision by the Information Commissioner you must apply within 60 days after the day on which notice of this decision was given to you or after the day on which notice of the internal review decision was given.

30. Your application must be in writing and must provide details of how notices may be sent to you and include a copy of this decision letter. The Information Commissioner also suggests that your application sets out why you are objecting to the decision. Your application can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO 5218, Sydney NSW 2001

Email: enquiries@oaic.gov.au

Complaints

31. You may also make a complaint to the Information Commissioner if you have concerns about how the Australian War Memorial has handled this part (or any part) or your request under the FOI Act.