



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-324

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 26 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

documents regarding the grant application for the 'Women's Changerooms for Morley Noranda Recreation Club' project in Western Australian, between 22 May 2022 and 1 March 2024.

This is a grant application which, as at the October 2023 Senate Estimates, was listed by the Department as being administered under the 'Investing in Our Communities' program.

Documents relevant to this request include but are not limited to documents that refer to the 'Women's Changerooms for Morley Noranda Recreation Club' project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department;
- f) any communications between the Department and any other Commonwealth Government agency.

## 1.1 Modification of scope of request

On 27 March 2024 following consultation with you, you agreed to modify the scope of your request to the following:

Regarding 'Women's changerooms for Morley Noranda Recreation Club':

a) any communications received from the applicant between 1 August 2023 and 15 February 2024

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified 13 documents with associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information eight documents
- grant partial access to five documents.

A schedule setting out the documents relevant to your request, with my decision in relation to documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of

reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the document marked 's47C' in the schedule is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **4.2 Section 47F – Documents affecting personal privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### **Personal Information**

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

### **Unreasonable Disclosure of Personal Information**

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.3 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

#### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

## Unreasonable adverse effect of disclosure

Paragraph 6.187 of the FOI Guidelines states that the presence of ‘unreasonably’ in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the documents marked ‘s47G’ are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure

- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not to a limited extent promote effective oversight of public expenditure, so far as it relates to a specific grant program
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to prejudice the ongoing viability of the affected third-party's business affairs

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I

am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

#### **4.5 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that duplicate material, as well as the personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

If you are dissatisfied with my decision, you may apply for a review of it.

#### **7.1 Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.



No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Assistant Secretary (A/g)  
Regional Development and Local Government Division

Date: 07 June 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-324

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	25/08/2023	Email from applicant to Department Subject: FW Re- IIOC0225	3	Access granted to relevant information	s22
2.	14/09/2023	Email from applicant to Department Subject: RE: Re - liOC0225 Noranda City Football Club Upgrades [SEC=OFFICIAL]	3	Access granted to relevant information	s22
3.	18/09/2023	Email from applicant to Department Subject: FW: liOC0225 Noranda City Football Club Upgrades project - change of proponent [SEC=OFFICIAL]; RE: liOC0025 - Approval to Transfer Project Attachment A Attachment B Attachment C Attachment D	2 1 1 3 2	Partial access granted	s22 s47F s22 s22 s22
4.	28/09/2023	Email from applicant to Department Subject: FW: lioc0225 - Audited Financial Reports Attachment A – <a href="#">City of Bayswater General Purpose Financial Statements for the year ended 30 June 2021</a> Attachment B – <a href="#">City of Bayswater General Purpose Financial Statements for the year ended 30 June 2022</a>	2	Access granted to relevant information  Publicly available material  Publicly available material	s22
5.	28/09/2023	Email from applicant to Department Subject: lioc0225 - Supporting documentation 1 of 2 Attachment A Attachment B Attachment C Attachment D Attachment E Attachment F Attachment G	2 5 9 2 2 1 4 4	Partial access granted	s22 s47G s22 s47F s22 s47G in full s47G in full
6.	28/09/2023	Email from applicant to Department Subject: lioc0225 - Application form and criteria responses Attachment A	2 32	Partial access granted	s22 s22 s47G

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
7.	02/10/2023	Email from applicant to Department Subject: RE: lioc0225 - Application form and criteria responses	5	Access granted to relevant information	s22
8.	24/10/2023	Email from applicant to Department Subject: RE: Investing in Our Communities (liOC) program - Morley Noranda Recreation Club	4	Access granted to relevant information	s22
9.	03/11/2023	Email from applicant to Department Subject: RE: IIOC00225	3	Access granted to relevant information	s22
10.	10/11/2023	Email from applicant to Department Subject: RE: IIOC00225 Attachment A	4 4	Partial access granted	s22 s47G
11.	16/11/2023	Email from applicant to Department Subject: RE: IIOC0225 - Noranda City Football Club Upgrades - Delegate Funding Approval Letter	2	Access granted to relevant information	s22
12.	02/02/2024	Email from applicant to Department Subject: RE: liOC0225 - liOC0225 - Noranda City Football Club Upgrades - Draft Grant Agreement - Vendor Creation Form - Statement of Commencement Attachment A Attachment B	4 14 2	Partial access granted	s22 s47C in full s22 s47G
13.	02/02/2024	Email from applicant to Department Subject: FW: liOC0225 - liOC0225 - Noranda City Football Club Upgrades - Draft Grant Agreement - Vendor Creation Form - Statement of Commencement Attachment A <i>This is a duplicate of Document 13, Attachment A and has been excluded from the document package</i>	4 14	Access granted to relevant information	s22 s22



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-372

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 3 April 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents relating to the Hero's Hill Community Centre project in New South Wales produced between 22 May 2022 and 1 March 2024.

This is a grant application which as at October 2022 was listed by the Department as being administrated under the Community Development Grants program. Documents relevant to this request include by are not limited to documents that refer to the Hero's Hill Community Centre project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department;
- f) any communications between the Department and any other Commonwealth Government agency.

#### 1.1 Modification of scope of request

On 5 April 2024, following consultation with you, you agreed to modify the scope of your request to the following:

Documents relevant to this request include documents that refer to the Hero's Hill Community Centre project in:

- a) any communications received by the Minister for Infrastructure, Transport, Regional Development and Local Government or the Minister for Regional Development, Local Government and Territories between 22 May 2022 and 30 October 2022;
- b) any documents regarding the withdrawal of this project from the Community Development Grants program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified three documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to grant partial access to three documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

Section 47G(2) of the FOI Act provides that section 47G(1) does not apply to trade secrets or other information to which section 47 applies. Section 47G has not been applied to any information which I have previously decided is exempt under section 47 of the FOI Act.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.



## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy:

- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

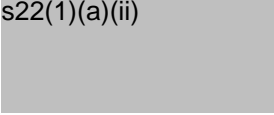
If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)



Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 5 June 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-372

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	24/10/2022	Correspondence to grantee	1	Partial access granted	s47F s22
2.	21/04/2023	Email from Grantee	3	Partial access granted	s47F s22
3.	25/08/2023	Email from Grantee	3	Partial access granted	s47F s22
		Attachment A	2		s47F s22

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-376

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## **Decision on your Freedom of Information Request**

I refer to your request of 5 April 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### **1 Your request**

You requested access to:

- a) copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the project known as “Direct Sunshine Coast Rail Line” or by any other name;
- b) any document titled or styled as “business case” relating to the Direct Sunshine Coast Rail Line project;

### **2 Authority to make decision**

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### **3 Decision**

I have identified 1 document with attachments that are relevant to your request. This document was in the possession of the Department when your request was received.

I have decided to refuse access to 1 document and its associated attachments.

### **4 Finding of facts and reasons for decision**

My findings of fact and reasons for deciding that exemptions apply to the document relevant to your request are set out below.

#### 4.1 Section 47 - Documents disclosing commercially valuable information

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
  - whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
  - whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
  - whether the information is still current or out of date (out of date information may no longer have any value), and
  - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine "arm's length" buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

For the reasons outlined above, I decided that the document and its attachments are exempt from disclosure under section 47(1)(b) of the FOI Act.

## 4.2 Section 47B - Documents affecting Commonwealth-State relations

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Paragraph 6.31 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that disclosure of the document would:

- interrupt or create difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- substantially impair (but not merely modify) Commonwealth-State programs
- adversely affect the continued level of trust or co-operation in existing inter-office relationships
- impair or prejudice the flow of information to and from the Commonwealth

Paragraph 6.41 of the FOI Guidelines states that when assessing whether the information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication.

The circumstances of the communication may also need to be considered, such as:

- whether the communication was ad hoc, routine or required
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information
- how the information was subsequently handled, disclosed or otherwise published.

I am satisfied that the document contains information which was communicated in confidence, and that the communication was considered to be confidential at the time of the communication.

In relation to the test *would or could reasonably be expected*, paragraph 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that damage that would or could reasonably be expected to occur, based on reasonable grounds, is real, significant or a material possibility.

### **Consultation with a State or Territory**

In making my decision, I consulted with the relevant State government, and I took into account any contentions made by the relevant State.

For the reasons outlined above, I decided that the document and its attachments are conditionally exempt from disclosure under section 47B of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.3 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public



- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- would adversely affect the administration of a continuing Commonwealth-State project
- would damage the continued level of trust or co-operation in existing inter-government working relationships
- would prejudice the attainment of positive community focussed outcomes related to the Direct Sunshine Coast Rail Line project
- would prejudice or impair the future flow of information from state and territory governments to the Commonwealth

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

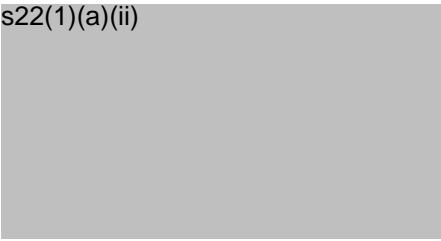
More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



A/g Assistant Secretary  
QLD, NT and WA Infrastructure Investment Branch  
Land Transport Infrastructure Division

Date: 30 May 2024



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-360

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 1 April 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

A copy of the Funding Agreement that was attached to the grant with ID GA351101.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified one document relevant to your request. This document was in the possession of the Department when your request was received.

I have decided to grant partial access to one document.

#### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of the document relevant to your request are set out below.

## 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure

of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **4.2 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs, and consists of the business entities bank details.

As such, I am satisfied that this information is business information.

### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would not provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government – noting that the conditionally exempt information only consists of the affected third party's employees names and banking details
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal



information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to prejudice the security of the affected third-party's banking details, leading to a risk that individuals with malicious intent may utilise this information for nefarious purposes.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.4 Section 22 – deletion of irrelevant material**

Section 22 of the FOI Act applies to documents containing irrelevant material and allows an agency to delete such material from a document.

The document contains personal identifiers of individuals. When your request was acknowledged, we notified you that personal information of third-party individuals, including public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. As such, an edited copy of this document has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the document released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the document being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the document captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Katrina Kendall  
Assistant Secretary  
Regional Development and Local Government Division

Date: 29 May 2024



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our references: FOI 24-369 & FOI 24-388

s22(1)(a)(ii)

To whom it may concern

### Decision on your Freedom of Information Request

On 31 March 2024 you submitted a request to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

On 3 April 2024, you also submitted a request to the Department of the Prime Minister and Cabinet (PM&C) also seeking access to documents under the FOI Act. On 9 April 2024, the Department agreed to accept transfer of that request from PM&C under section 16 of the FOI Act. You were notified of that transfer by PM&C on 9 April 2024.

#### 1 Your request

You requested access to:

##### FOI 24-369

Copies of emails, notes, reports, agreements, instruments, documents, Memoranda, Minutes concerning the proposal to transition the Norfolk Island International Airport and the Fire Fighting Arm of Norfolk Island to give control to the Commonwealth of Australia / Australian government.

##### FOI 24-388

Copies of emails, notes, reports, agreements, reports, instruments, documents, Memoranda, Minutes between any person contracted, engaged, works for, advises the Norfolk Island Regional Council and any department of the Commonwealth of Australia about the proposal to transition the Norfolk Island International Airport and the Fire Fighting Arm of Norfolk Island to the Commonwealth of Australia / Australian Government.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified one document that is relevant to both of your requests. This document was in the possession of the Department when your requests were received.

As this document is captured by both requests, for the purposes of administrative expediency, I am providing you with one decision in relation to that document, but which addresses both requests.

I have decided to grant partial access to one document.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of the document relevant to your requests are set out below.

#### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

##### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the document marked 's47F' includes personal information about a number of individuals.

##### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources

- the individuals whose personal information is contained in the document are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the document marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy:

- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant material

Section 22 of the FOI Act applies to documents containing irrelevant material and allows an agency to delete such material from a document.

The document contains personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. As such, an edited copy of this document has been



prepared in accordance with section 22(1)(a)(i) of the FOI Act. This information is marked 's22' in the document released to you.

## 5 Material taken into consideration

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

- the terms of your requests
- the content of the document captured by your requests
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the document captured by your request
- submissions from third parties consulted about the document, which contains information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Kynan Gowland  
Assistant Secretary  
Norfolk Island Branch  
Territories Division

Date: 29 May 2024



**Australian Government**  
**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-357

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 28 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

Documents regarding the grant application for the Whitten Oval Redevelopment (stage 2) project, Victoria between 22 May 2022 and 1 March 2024. This is a grant application which as at 27 March 2024 was listed by the Department as being administered under the 'Community Development Grants' program.

Documents relevant to this request include but are not limited to documents that refer to the Whitten Oval Redevelopment (stage 2) project in:

- a) any correspondence between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any correspondence between the Minister's office and the Department;
- c) any correspondence between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any correspondence between the Regional Minister's office and the Department;
- e) any correspondence between the applicant and the Department;
- f) any correspondence between the Department and any other Commonwealth Government agency.

On 2 April 2024, following consultation with you, you agreed to modify the scope of your request to the following:

Documents regarding the grant application for the Whitten Oval Redevelopment (stage 2) project, Victoria administered under the 'Community Development Grants' program.

- a) any communications received from the Ministers between 22 May 2022 and 30 October 2022;
- b) any communications from the applicant between 1 September 2022 and 15 May 2023; and
- c) any documents regarding the withdrawal of this project from the Community Development Grants program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Background

I have determined that some of the information you have requested is publicly available. Under section 4 of the FOI Act, the definition of a 'document' which may be subject to a request under the Act does not include *material maintained for reference purposes that is otherwise publicly available*.

Two documents which meet the terms of your request can be found at the following publicly available locations:

[resources.westernbulldogs.com.au/afic-wb/document/2021/12/01/a279ff52-e785-4437-a4a6-9db647125498/Western\\_Bulldogs\\_2021\\_Financial-Report.pdf](https://resources.westernbulldogs.com.au/afic-wb/document/2021/12/01/a279ff52-e785-4437-a4a6-9db647125498/Western_Bulldogs_2021_Financial-Report.pdf)

[resources.westernbulldogs.com.au/afic-wb/document/2022/11/30/cdadbd15-aa04-47f7-9367-8fe7d882203f/Western-Bulldogs-2022-Financial-Statements-Nov.pdf](https://resources.westernbulldogs.com.au/afic-wb/document/2022/11/30/cdadbd15-aa04-47f7-9367-8fe7d882203f/Western-Bulldogs-2022-Financial-Statements-Nov.pdf)

As such, I consider that these documents fall outside of the scope of the FOI Act, and I have not considered them in my decision.

## 4 Decision

I have identified 12 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- Grant partial access to one document
- refuse access to 11 documents in full.

## 5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 5.1 Section 47 - Documents disclosing trade secrets / commercially valuable information

Section 47(1)(a) of the FOI Act provides that a document is an exempt document if its disclosure would disclose trade secrets.

In *Department of Employment, Workplace Relations and Small Business v Staff Development and Training Company (2001) 114 FCR 301* the Federal Court interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown. The Federal Court referred to the following test in considering whether information amounts to a trade secret:

- the information is used in a trade or business
- the owner of the information must limit its dissemination or at least not encourage or permit its widespread publication

- if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the information

Paragraph 5.201 of the FOI Guidelines set out the factors that might be regarded as useful guidance but not an exhaustive list of matters to be considered include:

- the extent to which the information is known outside the business of the owner of that information
- the extent to which the information is known by persons engaged in the owner's business
- measures taken by the owner to guard the secrecy of the information
- the value of the information to the owner and to his or her competitors
- the effort and money spent by the owner in developing the information
- the ease or difficulty with which others might acquire or duplicate the secret

I am satisfied that the documents marked 's47' in the schedule contain information that would disclose a trade secret.

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
  - whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
  - whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
  - whether the information is still current or out of date (out of date information may no longer have any value), and
  - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value

- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine “arm’s length’ buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

As notified to you on 29 April 2024, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with an affected third party. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I decided that the documents marked ‘s47’ in the schedule are exempt from disclosure under sections 47(1)(a) and 47(1)(b) of the FOI Act.

## 5.2 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked ‘s47F’ includes personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document

- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **5.3 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.



Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy

- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## **6 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act

- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## **7 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## **8 Your review rights**

If you are dissatisfied with my decision, you may apply for a review of it.

### **8.1 Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### **8.2 Information Commissioner review or complaint**

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

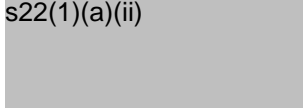
If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)



Dr Jennie Hood  
Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 24 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-357

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	20/06/2022	Deed	124	Access refused in full	s47
2.	Not dated	Spreadsheet	1	Access refused in full	s47
3.	8/9/2022	Site plans	1	Access refused in full	s47
4.	8/9/2022	Site plans	1	Access refused in full	s47
5.	13/09/2022	CDG1678 – RFI	12	Access refused in full	s47
6.	21/04/2023	Email	1	Access refused in full	s47
7.	7/9/2022	CDG1678 – Whitten oval project cost summary	2	Access refused in full	s47
8.	28/07/2022	CDG1678 – Whitten oval stage 2 project management plan	31	Access refused in full	s47
9.	22/12/2022	Email	2	Access refused in full	s47
10.	14/12/2022	Email	2	Access refused in full	s47
11.	19/04/2023	Email	3	Access refused in full	s47
12.	28/05/2023	Email	1	Partial access granted	s47F s22
		Attachment A	66	Partial access granted	s47 s47F s22

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-349

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 27 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

A copy of the ACIL Allen report used to inform the government's New Vehicle Efficiency Scheme legislation (Contract Notice ID: CN3968815-A1, as well as any briefing documents prepared for government ministers in relation to the report.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified 4 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to refuse access to 4 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 4.1 Section 34 - Cabinet documents

Section 34(1)(a) of the FOI Act provides that a document is an exempt document if both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted and
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.5 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 27-29 of the Cabinet Handbook state:

- 27. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.
- 28. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive Governments have relied on the convention that their views, either written or spoken will remain confidential well into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.
- 29. This convention provides the Executive of Government with the opportunity to contest policy ideas in a highly confidential manner in order to ensure that the collective decision that ultimately arises from the Cabinet's deliberations is the best possible policy decision for the administration of the Government.

I have had regard to the circumstances in which the documents marked 's34(1)' in the schedule were brought into existence, and I am satisfied that they were created for the dominant purpose of submission for consideration by the Cabinet, and that the documents were submitted to the Cabinet for its consideration.

I have had regard to the content of the documents marked 's34(3)' in the schedule and am satisfied that they contain information, the disclosure of which, would reveal a Cabinet deliberation.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that the documents marked 's34' in the schedule are exempt under section 34 of the FOI Act.

## 4.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents marked 's47C' in the contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

### Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents is an integral part of the deliberative content.

For the reasons outlined above, I decided that the documents marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.3 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

#### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs. The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.

Paragraph 6.194 of the FOI Guidelines states that ‘profession’ is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The documents marked ‘s47G’ in the schedule contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

#### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of ‘unreasonably’ in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.



I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the documents marked 's47G' in the schedule are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the Government's future deliberation in the development of a policy proposal

- could reasonably be expected to prejudice the future developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the profitability and ongoing viability of the affected third-party business

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

If you are dissatisfied with my decision, you may apply for a review of it.

## 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Tristan Kathage  
Assistant Secretary  
Reducing Surface Transport Branch  
Surface Transport Emissions and Policy Division

Date: 22 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	19/10/2023	Fuel Efficiency Scheme Stage 1 Report	179	Access refused in full	s34(1)(a) s34(3) s47C s47G
2.	26/10/2023	Fuel Efficiency Scheme Stage 2 Report	163	Access refused in full	s34(1)(a) s34(3) s47C s47G
3.	15/03/2024	Additional modelling	6	Access refused in full	s34(1)(a) s34(3) s47C s47G
4.	21/03/2024	Further Additional modelling	8	Access refused in full	s34(1)(a) s34(3) s47C s47G



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-318

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 22 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

The documents I am seeking access to relate to the grant application for the Feasibility Study into an 8-10 bed Dementia Unit at Campbell Town, Tasmania, between 22 May 2022 and 1 March 2024. This is a grant application which as at 20 March 2024 was listed by the Department as being administered under the Investing in Our Communities program.

Documents relevant to this request include, but are not limited to, documents that refer to the Feasibility Study into an 8-10 bed Dementia Unit project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 28 March 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

Documents relating to the Feasibility Study into an 8-10 bed Dementia Unit at Campbell Town to cover the following parameters - any documents regarding removal of this project from the Investing in Our Communities Program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified five documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in three documents;
- grant access in part to relevant information in one document; and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to a document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the *'deliberative process'* generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that *'deliberative matter'* is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the document marked 's47C' in the schedule is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.3 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.



In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely,  
s22(1)(a)(ii)

Clare Crappie  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 23 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-318

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	7/02/2023	Email	1	Access granted to relevant information	s22
3.	30/03/2023	Email	7	Access granted in part to relevant information	s47C s22
4.	19/04/2023	Email	7	Exempt in full	s47C s22
5.	05/05/2023	Letter from Minister for Health to Minister for Infrastructure	3	Access granted to relevant information	s22



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-311

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 20 March 2024 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant application for the Our Lady of Lebanon Aged Care Car Park, NSW project between 22 May 2022 and 1 March 2024. Documents relevant to this request include but are not limited to documents that refer to the Our Lady of Lebanon Aged Care Car Park project in:

- a. any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b. any communications between the Minister's office and the Department;
- c. any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d. any communications between the Regional Minister's office and the Department;
- e. any communications between the applicant and the Department; and
- f. any communications between the Department and any other Commonwealth Government agency.

On 26 March 2024 the Department informally consulted with you, and as a result you revised your request to the following:

In relation to the Our Lady of Lebanon Aged Care Car Park, NSW project under the Priority Community Infrastructure Program:

- a. any communications received from the applicant between 1 October 2022 and 1 March 2024.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified 12 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to grant partial access to relevant information in 12 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

### 4.1 Section 45 - Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- it must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information has or will cause detriment.

I am satisfied that the document attachments marked 's45' in the schedule consist of information:

- that is specifically identified within the documents as being confidential in nature;
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain;
- that was communicated and received on the basis of mutual understanding of confidence, and that this mutual understanding exists at the time of the communication;

- in circumstances in which disclosure of the information will be without the authority of the affected third party; and
- in circumstances where disclosure of the information would cause detriment to the party who provided the confidential information to the Department. The detriment in this instance would involve financial loss to the affected third party.

For the reasons outlined above, I decided that the document attachments marked 's45' in the schedule are exempt from disclosure under section 45 of the FOI Act.

#### **4.2 Section 47F – Documents affecting personal privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

##### **Personal Information**

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the parts of the documents marked 's47F' include personal information about a number of individuals.

##### **Unreasonable Disclosure of Personal Information**

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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; and
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable;
- the documents contain third party personal information;
- release of the documents would cause stress on the third party; and
- no public purpose would be achieved through release.

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act;
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information; and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known;
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document;
- the conditionally exempt personal information is not available from publicly accessible sources;
- the individuals whose personal information is contained in the documents are identifiable;
- release of this information would cause stress to the individuals concerned;
- no further public purpose would be achieved through the release of the personal information;
- the information is current and has not lost its sensitivity through the passage of time;

- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates; and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of particular personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.3 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

#### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

#### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.



Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.4 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- to a limited extent, would inform debate on a matter of public importance;

- would promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure could reasonably be expected to prejudice:

- the protection of a number of individuals right to personal privacy;
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
- the Department's ability to obtain confidential information of a similar nature in the future; and
- the preservation of the profitability and viability of an ongoing business entity.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.5 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. On 19 April 2024, you modified the scope of your request to expressly exclude the following information:

- Any commercial or financial details of the applicant or any third party organisation that may be referenced within the documents where those details are not specific to the eligible costs of delivering the project; and
- The names or personal identifying information of any person other than the principle contact officers of the applicant organisations.

As such, I have considered this information to be irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act and the irrelevant information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- submissions from third parties consulted about documents which contain information concerning them.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Katrina Kendall  
Assistant Secretary  
Regional Development and Local Government Division

Date: 22 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-311

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	14 July 2023 20 July 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure	4	Partial access granted to relevant information	s22 s47F s47G
2.	11 August 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure	7	Partial access granted to relevant information	s22 s47F
3.	28 August 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure	1	Partial access granted to relevant information	s22 s47F
4.	4 September 2023  4 October 2023  10 October 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Our Lady of Lebanon – Election Commitment	4	Partial access granted to relevant information	s22 s47F
5.	30 October 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: PCIP0102 Application	2	Partial access granted to relevant information	s22 s47F
		Attachment A	1	Access granted in full	
		Attachment B	5	Access granted in full	
		Attachment C	28	Partial access granted	s47F
		Attachment D	5	Partial access granted	s47F. s47G
		Attachment E	3	Access granted in full	
		Attachment F	23	Access refused in full	s45, s47G
		Attachment G	12	Access refused in full	s45, s47G
		Attachment H	15	Access granted in full	
		Attachment I	1	Access granted in full	
		Attachment J	2	Access granted in full	

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
6.	7 November 2023 14 November 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Progress of applications	4	Partial access granted to relevant information	s22 s47F
7.	15 November 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Progress of applications	5	Partial access granted to relevant information	s22 s47F
8.	22 November 2023	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Progress of applications	3	Partial access granted to relevant information	s22 s47F
9.	18 December 2023 29 January 2024	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Our Lady of Lebanon – additional information	5	Partial access granted to relevant information	s22 s47F
		Attachment A	28	Partial access granted	s47F
		Attachment B	1	Partial access granted	s47G
10.	8 February 2024	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Meeting acceptance	2	Partial access granted to relevant information	s22 s47F
11.	15 February 2024	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Our Lady of Lebanon – additional information	2	Partial access granted to relevant information	s22 s47F
12.	22 February 2024	Email from: Our Lady Aged Care Centre Ltd To: Department of Infrastructure Subject: Additional information for assessment criterion 1	4	Partial access granted to relevant information	s22 s47F



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-300

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 14 March 2024 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant applications for:

- a) the Kariong Sporting Precinct Upgrade project; and
- b) the Upgrades to the Kincumber Roos Soccer Clubhouse project,

between the period 22 May 2022 and 1 March 2024.

These are grant applications which as at 31 December 2023 were being administered under the Investing in Our Communities 'closed grants' program.

Documents relevant to this request include but are not limited to documents that refer to either project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department; and
- e) any communications between the City of Canterbury-Bankstown council and the Department.

On 26 March 2024, following consultation with you, you agreed to modify the scope of your request to the following:

With reference to documents regarding the Kariong Sporting Precinct project, between the dates of 25 October 2022 and 31 December 2023:

- a) Any communications received by the Department from either the Minister for Infrastructure, Transport, Regional Development and Local Government or the Minister for Regional Development, Local Government and Territories, or their offices;
- b) Any communications received from the applicant;
- c) Any communications received from a Member of Parliament; or
- d) Any documents regarding changes of scope or grant amount for the project.

With reference to the Kincumber Roos Soccer Clubhouse project, between the dates of 22 May 2022 and 25 October 2022, and between the dates of 31 August 2023 and 31 December 2023:

- a) Any communications received by the Department from either the Minister for Infrastructure, Transport, Regional Development and Local Government or the Minister for Regional Development, Local Government and Territories, or their offices;
- b) Any communications received from the applicant;
- c) Any communications received from a Member of Parliament; or
- d) Any documents regarding changes of scope or grant amount for the project.

On 12 April 2024, following a formal request consultation process with you, you agreed to further revise the scope of your request to the following:

With regard to both the Kariong Sporting Precinct project and the Kincumber Roos Soccer Clubhouse project at Frost Reserve:

- a) copies of any documents requesting a change of project scope or funding; and
- b) copies of the project application document/s considered by the Minister and/or Minister's delegate (as appropriate) in making the final decision to approve the proposed project grants for the purpose of commencing negotiating deeds of agreement, between the dates of 28 October 2022 and 31 December 2023.

Excluded from the above request are

- a) any commercial or financial details of the applicant/s or any third party organisation that may be referenced within documents where those details are not specific to the eligible costs of delivering the projects; and
- b) the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.



### 3 Decision

I have identified three documents and their associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant partial access to relevant information in one document; and
- refuse access to two documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to parts of documents relevant to your request are set out below.

#### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

#### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the

weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the documents marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' in the schedule include personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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; and
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making

process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable;
- the documents contain third party personal information;
- release of the documents would cause stress on the third party; and
- no public purpose would be achieved through release.

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information;
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act;
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information; and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known;
- some of the people to whom the personal information relates are not known to be (or to have been) associated with the matters dealt with in the document;
- some of the conditionally exempt personal information is not available from publicly accessible sources;
- the individuals whose personal information is contained in the documents are identifiable;

- release of this information may cause stress to the individuals concerned;
- no further public purpose would be achieved through the release of the personal information;
- the information is current and has not lost its sensitivity through the passage of time; and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and

- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

#### 4.4 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. You agreed to exclude from your request the following information:

- any commercial or financial details of the applicant/s or any third party organisation that may be referenced within documents where those details are not specific to the eligible costs of delivering the projects; and

- b) the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

As such, an edited copy of the documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act deleting irrelevant information. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with affected third parties.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## 9 Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 24 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	16/06/2023	Email	2	Partial access granted to relevant information	s22
		Attachment A	2		s22 s47F
		Attachment B	1		
2.	18/11/2023	IIOC0315- Eligibility and Criteria Assessment	11	Access refused	s47C
3.	16/11/2023	IIOC0220 - Eligibility and Criteria Assessment	13	Access refused	s47C





**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-320

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 25 March 2024 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

The documents I am seeking access to are documents regarding the grant application for the GROW: Guiding Rural and Outback Wellbeing in partnership with Leaderlife, NSW project between 22 May 2022 and 1 March 2024. This is a grant application which as of October 2022 (refer FOI 23-063) was listed by the Department as being administered under the Investing in Our Communities program.

Documents relevant to this request include but are not limited to documents that refer to the GROW: Guiding Rural and Outback Wellbeing in partnership with Leaderlife project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 5 April 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you further revised the scope of your request to the following:

With regard to the GROW: Guiding Rural and Outback Wellbeing in partnership with Leaderlife project under the Investing in our Communities program:

- a) copies of documents recommending approval to remove the project from the Investing in Our Communities program; and
- b) copies of documents regarding transferring the project for consideration by an alternative program and/or agency. The dates of the search are between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified six documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in five documents; and
- refuse access to relevant information in one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the document marked 's47C' in the schedule is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines); and
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 23 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	23/2/2023	Email	2	Access granted to relevant information	s22
3.	7/2/2023	Email	2	Access granted to relevant information	s22
4.	30/03/2023	Email	8	Access granted to relevant information	s22
5.	19/4/2023	Email	6	Access refused in full	s47C
6.	5/5/2023	Letter from Minister for Health and Aged Care to Minister for Infrastructure regarding proposed transfers	2	Access granted to relevant information	s22



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-381

s22(1)(a)(ii)

Dear s22(1)(a)

## Decision on your Freedom of Information Request

I refer to your two requests of 8 April 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

**FOI 24-381** - All briefing documents and advice provided to the office of Arts Minister Tony Burke regarding the government's 'Australian screen content requirements on streaming services targeted consultation paper - refined models' between November 1, 2023 and April 1, 2024.

You also requested access to:

**FOI 24-382** - All communications between Arts Minister Tony Burke and the Department of Infrastructure related to the government's 'Australian screen content requirements on streaming services targeted consultation paper - refined models' between November 1, 2023 and April 1, 2024.

#### 1.1 Modification of scope of request

On 16 April 2024, following consultation with you, you agreed to modify the scope of your request to the following:

Final ministerial briefings provided to the office of Arts Minister Tony Burke regarding the government's 'Australian screen content requirements on streaming services targeted consultation paper - refined models' between November 1, 2023 and April 1, 2024.

On 17 April 2024, as part of the consultation process, you also agreed to withdraw FOI 24-382, on the basis that the Department would proceed to process the modified scope.



## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified two documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant partial access to one document
- refuse access to one document

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 4.1 Section 34 - Cabinet documents

Section 34(1)(a) of the FOI Act provides that a document is an exempt document if both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted and
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet

Section 34(1)(c) of the FOI Act provides that a document is an exempt document if it was brought into existence for the dominant purpose of briefing a Minister on a document to which subsection (a) applies.

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.5 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 27-29 of the Cabinet Handbook state:

27. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.
28. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive Governments have relied on the convention that their views, either written or spoken will remain confidential well

into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.

29. This convention provides the Executive of Government with the opportunity to contest policy ideas in a highly confidential manner in order to ensure that the collective decision that ultimately arises from the Cabinet's deliberations is the best possible policy decision for the administration of the Government.

I have had regard to the circumstances in which the document marked 's34(1)' in the schedule was brought into existence, and I am satisfied that it was created for the dominant purpose of briefing a Minister on a submission for consideration by the Cabinet, and that it has been submitted to the Cabinet for its consideration.

I have had regard to the content of the parts of the documents marked 's34(3)' and am satisfied that they contain information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that the documents marked 's34' in the schedule are exempt under section 34 of the FOI Act.

#### **4.2 Section 42 - Documents subject to legal professional privilege**

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines state:

- 5.127 The FOI Act does not define LPP for the purposes of the exemption. To determine the application of this exemption, the decision maker needs to turn to common law concepts of LPP.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that the parts of the documents marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence
- the communication was brought into existence for the dominant purpose of giving or receiving legal advice.
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that the parts of the documents marked 's42' are exempt from disclosure under section 42 of the FOI Act.

### 4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

#### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the document marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the parts of the document marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.5 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of the documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Rebecca Rush  
Assistant Secretary  
Screen and Arts Workforce Development Branch  
Creative Economy and the Arts Group  
Date: 21 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-381

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/11/2023	MS23-004930	32	Partial access granted	s22 s42 s47C s34
2.	26/03/2024	MS24-000509	4	Access refused in full	s34

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-355

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 28 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant application for the Burwood Road CCTV project, Victoria between 22 May 2022 and 1 March 2024. This is a grant application which as at 27 March 2024 was listed by the Department as being administered under the 'Community Development Grants' program. Documents relevant to this request include but are not limited to documents that refer to the Burwood Road CCTV project in:

- a) any correspondence between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any correspondence between the Minister's office and the Department;
- c) any correspondence between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any correspondence between the Regional Minister's office and the Department;
- e) any correspondence between the applicant and the Department;
- f) any correspondence between the Department and any other Commonwealth Government agency.



## 1.1 Clarification/Modification of scope of request

On 2 April 2024, following consultation with you, you agreed to modify the scope of your request to the following:

Documents regarding the grant application for the Burwood Road CCTV project, Victoria:

- a) any communications received from the Ministers between 22 May 2022 and 30 October 2022
- b) any communications from the applicant between 1 September 2022 and 15 May 2023; and
- c) any documents regarding the withdrawal of this project from the Community Development Grants program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified 3 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to grant partial access to 3 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person

- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and

- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Dr Jennie Hood  
Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 22 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-355

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	24/10/2022	Email – subject: Re: For your urgent attention: Community Development Grants Programme	2	Partial access granted	s22 s47F
	24/10/2022	Attachment A – CDG1449 Burwood Road CCTV	1		s22 s47F
2.	1/11/2022	Email – subject: CDG1449 – Letter of Funding Withdrawal	1	Partial access granted	s22 s47F
	31/10/2022	Attachment A - CDG1449 – Letter of Offer of Funding Withdrawal	1		s22 s47F
3.	1/11/2022	Minute – subject: Withdrawal – CDG1449 – Glenferrie Road Hawthorn Shopping Centre Association Inc – Burwood Road CCTV	2	Partial access granted	s22 s47F



**Australian Government**  

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-322

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 25 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

Your original scope received 25 March 2024 was as follows:

Documents regarding the grant application for the Junee High School Sporting Grounds, NSW project between 22 May 2022 and 1 March 2024.

This is a grant application which as of October 2022 (refer FOI 23-063) was listed by the Department as being administered under the Community Development Grants program.

Documents relevant to this request include but are not limited to documents that refer to the Junee High School Sporting Grounds project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department;
- f) any communications between the Department and any other Commonwealth Government agency.

On 27 March 2024, following consultation with you, you agreed to modify the scope of your request to the following:

As relevant to the grant application for the Junee High School Sporting Grounds, NSW project under the Community Development Grants program:

- a) any communications between the Department and the applicant from 1 October 2022 to 15 May 2023



## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified four documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in one document
- grant partial access to three documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **4.2 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

## Business information

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

## Unreasonable adverse effect of disclosure

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

- could reasonably be expected to prejudice the profitability and ongoing viability of the affected third-party business

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.4 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The documents contain personal identifiers of individuals. When your request was acknowledged, we notified you that personal information of third-party individuals, including public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22(1)(a)(ii) of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Dr Jennie Hood  
Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 22 May 2024

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-322

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	26/10/2022	Emails from department to grantee	1	Partial access granted	s47F
		Attachment A – program closure instructions	1	Partial access granted	s22 s47F
2.	16/11/2022	Email chain between grantee and department	3	Partial access granted	s22 s47F
		Attachment A – request for information form	14	Access granted in full	
		Attachment B – program closure instructions (Please note: Attachment 2B is a copy of Attachment 1A)	1	Partial access granted	s22 s47F
3.	12/12/2022	Email from department to grantee	1	Access granted to relevant information	s22
4.	13/12/2022	Email chain between grantee and department	2	Partial access granted	s22 s47F
		Attachment A – grant application	14	Partial access granted	s22 s47F s47G
		Attachment B – invoice	1	Partial access granted	s22 s47G

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-258

s22(1)(a)(ii)

Dear s22(1)  
(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 1 February 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

information relating to this proposed base-station (Danbulla) held by the Department, including but not limited to:

1. Any communications between the Department and Telstra relating to the original Black Spot funding application.
2. Any communications between the Department and Telstra relating to the failure by Telstra to deploy the funding in Danbulla and the redeployment of these funds elsewhere.
3. Any communications between the Department and Telstra relating to the most recent Regional Connectivity Program Round, specifically Telstra's application relating to the Danbulla Locality and the Department's reasons for denying funding.
4. Any document held by the Department naming me s22(1)(a)(ii).

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified 76 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 7 documents, and
- grant partial access to 69 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

Some of the documents in question are emails with files attached in file formats not able to be opened by the Department or cannot be converted to a format to enable us to produce it as a discrete written document. Section 17(1)(c)(i) of the FOI Act only requires data held in the Department's computer systems to be provided if a written document can be produced by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information.

As the Department does not have the ability to produce a written document from these attachments, these attachments have not been provided to you. The schedule of documents at **ATTACHMENT A** identifies where documents contain such attachments.

#### 3.1 Section 22 – deletion of irrelevant and exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and exempt material and allows an agency to delete such material from a document.

The documents captured by your request contain material which relates to proposed base stations other than at Danbulla or the proposed replacement sites for Danbulla.

When your request was acknowledged, we notified you that:

- personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers
- drafts of final versions of documents captured by your request, and
- correspondence sent directly to or from you

would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, I decided that information marked 's22' in the documents released to you can reasonably be regarded as irrelevant to your request and has been deleted from the documents under section 22(1)(a)(ii) of the FOI Act.

I also considered that internal emails forwarding correspondence sent directly to or from you, with no further substantive material included, are outside the scope of your request.

As I also decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

### 4.1 Section 47 - Documents disclosing commercially valuable information

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body, and
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine "arm's length" buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

As notified to you on 1 March 2024, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I decided that the parts of the documents marked 's47(1)(b)' are exempt from disclosure under section 47(1)(b) of the FOI Act.

## 4.2 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the people to whom the personal information relates are not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time

- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- may, to a limited degree, inform debate on a matter of public importance
- would promote, to a limited degree, effective oversight of public expenditure
- would not allow you access to your own personal information.

## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them.



## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Karly Pidgeon  
Assistant Secretary  
Regional Mobile Infrastructure Programs Branch  
Communications Services and Consumer Division

Date: 23 May 2024



**Australian Government**  
**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-319

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 22 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

Documents relevant to this request include but are not limited to documents that refer to the Community Owned Response to Eliminating Suicide project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 5 April 2024, the Department commenced a formal request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

As relevant the Community Owned Response to Eliminating Suicide project under the Investing in Our Communities Program:

- (a) any documents regarding removal of this project from the Investing in Our Communities Program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified five documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in four documents; and
- refuse access to one document

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to a document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the document marked 's47C' in the schedule is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;

- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. This information relates to projects outside the scope of your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. The irrelevant information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 22 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-19

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	23/02/2023	Email	2	Access granted to relevant information	s22
		Attachment A	1	Access granted to relevant information	s22
3.	30/03/2023	Email	7	Access granted to relevant information	s22
4.	14/04/2023	Email	7	Access refused in full	s47C
5.	05/05/2023	Letter from Minister for Health to Minister for Infrastructure	3	Access granted to relevant information	s22





## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-350

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 26 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant application for the 'Bayswater Urban Forest' project in Western Australian, between 22 May 2022 and 1 March 2024.

This is a grant application which, as at the May 2023 Senate Estimates, was listed by the Department as being administered under the 'Investing in Our Communities' program.

Documents relevant to this request include but are not limited to documents that refer to the 'Bayswater Urban Forest' project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 5 April 2024, the Department commenced a formal request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

Regarding the 'Bayswater Urban Forest project' under the 'Investing in our Communities program',

- a) copies of any documents recommending approval to remove the project from the Investing in Our Communities program, and
- b) copies of any documents regarding transferring the project for consideration by an alternative program and/or agency.

The dates of the search are to be set at 1 September 2022 to 15 May 2023.

Excluded from the above request are:

- a) any commercial or financial details of the applicant or any third party organisation that may be referenced within documents; and
- b) the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified three documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in two documents; and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to a document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 3*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests.
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.3 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. In your amended request, you excluded the following material from the scope of your request: *“the names or personal identifying information of any person other than the principle contact officers of applicant organisations.”* On this basis, personal identifying information including email addresses, signatures and direct telephone numbers have been considered irrelevant to the scope of your request.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 20 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-350

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	1	Access granted to relevant information	s22
2.	30/03/2023	Email	7	Access granted to relevant information	s22
3.	19/04/2023	Email	7	Access refused in full	s47C



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-287

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 6 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Correspondence regarding the appointment of Ita Buttrose in 2019 as chairman of the Australian Broadcasting Corporation. Including:

- a) a record of correspondence relating to candidates for the position, including but not only Ita Buttrose, between the Department of Communications and the Prime Minister's Office, including correspondence between the then Communications Minister, Mitch Fifield, and Scott Morrison, as well as correspondence between the Department of Communications and the ABC, including correspondence between Mitch Fifield and ABC Acting Chair Kirstin Ferguson.
- b) any documentation, relating to the ABC Chair selection process, discussion of candidates and the appointment of Buttrose, including minutes of meetings.

Time period between 1 September 2018 and 30 April 2019.

In this context, "correspondence" would take the form of emails, text messages, internal messaging, e.g. Slack or other instant messengers, and audio conversations if available.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.



### 3 Decision

I have identified 15 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 3 documents
- grant partial access to 9 documents
- refuse access to 3 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents, or parts of the documents relevant to your request are set out below.

#### 4.1 Section 42 - Documents subject to legal professional privilege

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines state:

- 5.127 The FOI Act does not define LPP for the purposes of the exemption. To determine the application of this exemption, the decision maker needs to turn to common law concepts of LPP.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that the document marked 's 42' in the schedule of documents consists of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence
- the communication was brought into existence for the dominant purpose of giving or receiving legal advice
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that the document marked 's42' in the schedule of documents is exempt from disclosure under section 42 of the FOI Act.

## 4.2 Section 45 - Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment

I am satisfied that the documents, or parts thereof marked 's45' in the schedule of documents consist of information:

- that is specifically identified within the documents as being confidential in nature
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain
- that was communicated and received on the basis of mutual understanding of confidence, and that this mutual understanding exists at the time of the communication
- in circumstances in which disclosure of the information will be without the authority of the affected third party, and
- in circumstances where disclosure of the information would cause detriment to the party who provided the confidential information to the Department. The detriment in this instance would involve embarrassment, exposure to ridicule, or public criticism to the affected third party.

For the reasons outlined above, I decided that the documents, or parts thereof marked 's45' in the schedule of documents are exempt from disclosure under section 45 of the FOI Act.

## 4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the documents marked 's47C' contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

### **Purely factual material**

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents are an integral part of the deliberative content.

For the reasons outlined above, I decided that the parts of the documents marked 's47C' in the schedule of documents are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **4.4 Section 47F – Documents affecting personal privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### **Personal Information**

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the documents, or parts thereof marked 's47F' in the schedule of documents includes personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information

- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the documents, or parts thereof marked 's47F' in the schedule of documents are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.5 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of organisations or undertakings. This information is relevant to the profitability and financial viability of the organisations or undertakings, and does not relate to private or internal affairs.

As such, I am satisfied that this information is business information.

### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of organisations. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party businesses outweighs the public interest in the disclosure of this information.

I have consulted with affected third parties regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.6 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to adversely affect the business, commercial or financial affairs of an organisation.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt business information in relation to organisations' business, commercial or financial affairs would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.7 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

#### **Exempt material**

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

#### **Irrelevant material**

The documents contain personal identifiers of public servants and duplicate drafts of final versions of documents captured by your request.

When your request was acknowledged, we notified you that:

- personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information.



- any duplicates and drafts of final versions of documents captured by your request would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information.

On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above. As I decided that some information you have requested is irrelevant to your request, I have prepared an edited copy of the documents being released by deleting the irrelevant information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562)

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process)

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference, our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log)

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Margaret Lopez  
Assistant Secretary  
Media Industry and Sustainability Branch  
Online Safety, Media and Platforms Division

Date: 16 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS – FOI 24-287

Doc No.	Date of document	Description of document	No. of Pages	Decision on access	FOI Act Provision
1.	03/10/2018	Internal Correspondence - Unsigned duplicate of MS18-001169	11	Access granted to relevant information	s 22
2.	03/10/2018	External & Internal Correspondence	6	Access refused in full	s 45 s 47F
3.	09/10/2018	MS18-001169 - Initiating New Selection Process for ABC Chairperson Position	12	Partial access granted	s 22 s 47F
4.	17/10/2018	MC18-129723 - Prime Minister Letter to Minister	1	Access granted in full	
5.	26/10/2018	External & Internal Correspondence	5	Access refused in full	s 45 s 47F
6.	01/11/2018	External & Internal Correspondence - Executive Search Update 1	2	Partial access granted	s 22 s 47F s 47G
7.	08/11/2018	External & Internal Correspondence - Executive Search Update 2	1	Partial access granted	s 22 s 47F s 47G
8.	15/11/2018	External & Internal Correspondence - Executive Search Update 3	1	Partial access granted	s 22 s 47F s 47G
9.	20/11/2018	External & Internal Correspondence - ABC Friends Preferred Nomination Petition	2	Partial access granted	s 22 s 47G
10.	16/01/2019	Correspondence from Department to Department of the Prime Minister and Cabinet - Nomination Panel Report	72	Partial access granted	s 22 s 45 s 47C s 47F s 47G
11.	18/01/2019	Internal Correspondence	4	Access refused in full	s 42
12.	23/01/2019	MS18-001451 - ABC Chairperson Appointment & Duplicate Nomination Panel Report	83	Partial access granted	s 22 s 47F
13.	07/03/2019	Executive Council Minute Paper & Explanatory Memorandum - Appointment of Ita Buttrose AO OBE	6	Partial access granted	s 47F
14.	31/03/2019	Congratulatory Letter from Minister to Ita Buttrose AO OBE	1	Partial access granted	s 47F
15.	03/04/2019	Appointment Statement of Reasons - Requirement Under Subsection 24X(2) of the <i>Australian Broadcasting Corporation Act 1983</i>	2	Access granted in full	



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-321

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 25 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

Documents regarding the grant application for the Construction of secure housing for staff members of Wilcannia Safe House, NSW project between 22 May 2022 and 1 March 2024. This is a grant application which as of October 2022 (refer FOI 23-063) was listed by the Department as being administered under the Investing in Our Communities program.

Documents relevant to this request include but are not limited to documents that refer to the Construction of secure housing for staff members of Wilcannia Safe House project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 5 April 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

As relevant to the Construction of secure housing for staff members of Wilcannia Safe House project under the Investing in Our Communities Program:

- a) any communications received from the Ministers between 22 May 2022 and 30 October 2022;
- b) any communications between the Department and other Commonwealth agencies between 1 September 2022 and 15 May 2023; and
- c) any documents regarding removal of this project from the Investing in Our Communities Program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified five documents and associated attachments relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in four documents; and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing perspectives, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 4*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information, at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.



No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 17 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-21

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	27/02/2023	Ministerial Correspondence: MS23-000178 Letter from The Hon Amanda Rishworth MP Minister of Social Services	2	Access granted to relevant information	s22
3.	30/03/2023	Email	7	Access granted to relevant information	s22
4.	14/04/2023	Email	7	Access refused in full	s47C
5.	28/04/2023	Email	6	Access granted to relevant information	s22
		Attachment A	5	Access granted to relevant information	s22
		Attachment B	1	Access granted to relevant information	s22



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-323

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 25 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

Documents relevant to this request include but are not limited to documents that refer to the Purchase of equipment, uniforms and sunshades for Kardinya Red Sox tee ball/baseball club project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 5 April 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

As relevant to the Purchase of equipment, uniforms and sunshades for Kardinya Red Sox tee ball/baseball club project under the Investing in Our Communities Program:

- a) any communications received from the Ministers between 22 May 2022 and 30 October 2022;
- b) any communications between the Department and other Commonwealth agencies between 1 September 2022 and 15 May 2023; and
- c) any documents regarding removal of this project from the Investing in Our Communities Program between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified five documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in four documents; and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to a document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 4*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;

- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of the documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely,  
s22(1)(a)(ii)

Clare Chappie  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 20 May 2024



## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-23

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	23/02/2023	Email	2	Access granted to relevant information	s22
		Attachment A	1	Access granted to relevant information	s22
3.	30/03/2023	Email	7	Access granted to relevant information	s22
4.	14/04/2023	Email	7	Access refused in full	s47C
5.	05/05/2023	Letter from Minister for Health to Minister for Infrastructure	3	Access granted to relevant information	s22



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-335

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 26 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents relevant to this request include but are not limited to documents that refer to the PV and Batteries at Local Primary Schools in the Burns Beach State electorate project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 29 March 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

In regards to the project titled PV and Batteries at Local Primary Schools in the Burns Beach State Electorate:

- a) copies of documents recommending approval to remove the project from the Investing in Our Communities program; and
- b) copies of documents regarding transferring the project for consideration by an alternative program and/or agency.

The dates of the search are between 1 September 2022 and 15 May 2023.

Excluded from the above request are:

- a) any commercial or financial details of the applicant or any third party organisation that may be referenced within documents; and
- b) and b) the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified five documents and associated attachments relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in four documents; and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to a document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing perspectives or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 4*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest;
- not something of interest to the public, but in the interest of the public;
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests;
- necessarily broad and non-specific; and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government;
- would not inform debate on a matter of public importance;
- would not promote effective oversight of public expenditure; and
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information, at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request;
- the content of the documents captured by your request;
- the provisions of the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request; and
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 17 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-5

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	27/03/2023	Letter from Minister for Education to Minister for Infrastructure, Transport, Regional Development and Local Government	1	Access granted to relevant information	s22
3.	30/03/2023	Email	7	Access granted to relevant information	s22
4.	14/04/2023	Email	5	Access refused in full	s47C
5.	28/04/2023	Email	6	Access granted to relevant information	s22
		Attachment A	5	Access granted to relevant information	s22
		Attachment B	1	Access granted to relevant information	s22





## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-334

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 26 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents relevant to this request include but are not limited to documents that refer to the Upgrading the Men's Tribal Centre in Halls Creek project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department;
- f) any communications between the Department and any other Commonwealth Government agency.

On 29 March 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

In regards to narrowing Senator Brockman's FOI request on the project titled Upgrading the Men's Tribal Centre in Halls Creek, I'd like to request:

- a) copies of documents recommending approval to remove the project from the Investing in Our Communities program, and
- b) copies of documents regarding transferring the project for consideration by an alternative program and/or agency.

The dates of the search are between 1 September 2022 and 15 May 2023.

Excluded from the above request are

- a) any commercial or financial details of the applicant or any third party organisation that may be referenced within documents;
- b) the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified three documents and associated attachments relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in two documents, and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to a document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing perspectives, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 3*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.3 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

s22(1)(a)(ii)



Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 15 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	30/03/2023	Email	7	Access granted to relevant information	s22
3.	14/04/2023	Email	5	Access refused in full	s47C



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-316

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 22 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

documents regarding the grant application for the Brisbane Arts Theatre and PIP Theatre project between 22 May 2022 and 1 March 2024. This is a grant application which as at October 2022 was listed by the Department as being administered under the Investing in Our Communities program.

Documents relevant to this request include but are not limited to documents that refer to the Brisbane Arts Theatre and PIP Theatre project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department;
- f) any communications between the Department and any other Commonwealth Government agency.



On 5 April 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

With regard to the Brisbane Arts Theatre and PIP Theatre project under the Investing in our Communities program,

- a) copies of documents recommending approval to remove the project from the Investing in Our Communities program, and
- b) copies of documents regarding transferring the project for consideration by an alternative program and/or agency. The dates of the search are between 1 September 2022 and 15 May 2023.

Excluded from the above request are a) any commercial or financial details of the applicant or any third party organisation that may be referenced within documents; and b) the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified three documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in two documents, and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to one of the documents are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the schedule contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 4*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents also contain personal identifiers of public servants. In the terms of your revised request of 5 April 2024, you excluded from the scope of your request the names or personal identifying information of any person other than the principal contact offices of applicant organisations. On this basis, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi\\_review\\_process](http://www.oaic.gov.au/freedom-of-information/foi_review_process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely,  
s22(1)(a)(ii)

Clare Crappie  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 16 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-316

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	30/03/2023	Email	7	Access granted to relevant information	s22
3.	19/04/2023	Email	6	Access refused in full	s47C



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-313

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 20 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant application for the Mobile CCTV Community Safety Initiative project in the electorate of Casey in Victoria between 22 May 2022 and 1 March 2024. This is a grant application which, as at October 2022, was listed by the Department as being administered under the Investing in Our Communities program.

Documents relevant to this request include but are not limited to documents which refer to the Mobile CCTV Community Safety Initiative project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 5 April 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

As relevant to the Mobile CCTV Community Safety Initiative project in Victoria under the Investing in Our Communities Program:

I propose to revise the scope of my request to documents between 1 September 2022 and 15 May 2023 and limit the search to:

- (a) copies of documents recommending approval to remove the project from the Investing in Our Communities program; and
- (b) copies of documents regarding transferring the project for consideration by an alternative program and/or agency.

Excluded from the above request are any commercial or financial details of the applicant or any third-party organisation that may be referenced within documents and the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified five documents and associated attachments that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in four documents, and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.



## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing perspectives, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 4*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

## Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

## Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. You have specifically requested access to documents regarding the Mobile CCTV Community Safety Initiative project in Victoria. The documents contain information regarding other grant programs which are not subject of your request, and as such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- consultation with other Commonwealth agencies.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi\\_review\\_process](http://www.oaic.gov.au/freedom-of-information/foi_review_process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
Assistant Secretary  
Regional Development and Local Government Division

Date: 16 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-313

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31		
		Attachment B	2		
2.	27/02/2023	Ministerial Submission MS23-00018 Letter from The Hon Amanda Rishworth MP Minister of Social Services	2	Access granted to relevant information	s22
3.	30/03/2023	Email	7	Access granted to relevant information	s22
4.	19/04/2023	Email	7	Access refused in full	s47C
5.	28/04/2023	Email	6	Access granted to relevant information	s22
		Attachment A	5	Access granted to relevant information	s22
		Attachment B	1	Access granted to relevant information	s22



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-380

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 8 April 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant application for the Training Centre of Excellence for Aged and Disability Services, TAS, project between 22 May 2022 and 1 March 2024. This is a grant application which as at October 2022 was listed by the Department as being administered under the Investing in Our Communities program.

Documents relevant to this request include but are not limited to documents which refer to the Training Centre of Excellence for Aged and Disability Services project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

On 19 April 2024, the Department issued you with a practical refusal notification and commenced a request consultation process with you under section 24AB of the FOI Act. As a result of the consultation, you revised the scope of your request to the following:

With regard to the Training Centre of Excellence for Aged and Disability Services project:

- a) copies of documents recommending approval to remove the project from the Investing in Our Communities program, and
- b) copies of documents regarding transferring the project for consideration by an alternative program and/or agency. The dates of the search are between 1 September 2022 and 15 May 2023.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified three documents and associated attachments relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in two documents, and
- refuse access to one document.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document marked 's47C' in the contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing perspectives, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that *Document 3*, marked 's47C' in the schedule, is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.



### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure of the conditionally exempt information at this time, could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. You have specifically requested access to documents regarding the Mobile CCTV Community Safety Initiative project in Victoria. The documents contain information regarding other grant programs which are not subject of your request, and as such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Clare Chapple  
First Assistant Secretary  
Regional Development and Local Government Division

Date: 16 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-380

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29/01/2023	Ministerial Submission MS22-002221	4	Access granted to relevant information	s22
		Attachment A	31	Access granted to relevant information	s22
		Attachment B	2	Access granted to relevant information	s22
2.	27/02/2023	Ministerial Submission MS23-00018 Letter from The Hon Amanda Rishworth MP Minister of Social Services	2	Access granted to relevant information	s22
3.	19/04/2023	Email	7	Access refused in full	s47C

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-278

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 23 February 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

- a) a copy of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' briefing pack prepared for the February 2024 Budget Additional Estimates 2023-24 hearing of the Rural and Regional Affairs and Transport Legislation Committee on Monday 12 February 2024; and
- b) a copy of any communications received by the Department Secretary for the purposes of answering questions at Senate Estimates, either in physical form or by electronic communication on 12 February 2024.

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

In relation to part a) of your request, I have identified 88 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access to relevant material in 85 documents, and
- grant partial access to 3 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

In relation to part (b) of your request, I am satisfied that all reasonable searches have been conducted to find documents which would be relevant to this part of your request and that no documents matching the terms of this part of your request were identified as being in the possession of the Department

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document, and
- (b) the agency or Minister is satisfied that the document:
  - (i) is in the agency's or Minister's possession but cannot be found, or
  - (ii) does not exist.

As such, this part of my decision is made in accordance with section 24A of the FOI Act, on the basis that the Department does not hold a document in its possession that meets the terms of part (b) of your request.

### **3.1 Section 22 – deletion of irrelevant and exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and exempt material and allows an agency to delete such material from a document.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22(1)(a)(ii) of the FOI Act as outlined above.

As I also decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **4 Finding of facts and reasons for decision**

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

### **4.1 Section 37 - documents affecting enforcement of law and protection of public safety**

Section 37(2)(a) of the FOI Act provides that a document is an exempt document if its disclosure would, or could reasonably be expected to prejudice the fair trial of a person or the impartial adjudication of a particular case.

Paragraph 5.107 of the FOI Guidelines states that this exemption operates in specific circumstances; that it is necessary to identify which persons would be affected and that the term 'prejudice' implies some adverse effect from disclosure.

The part of Document 32 marked 's37(2)(a)' contains information which, if disclosed, would, or could reasonably be expected to prejudice the impartial adjudication of a trial.

In relation to the test *would or could reasonably be expected*, paragraphs 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that the disclosure of this information would result in a real, significant or material possibility of prejudice to the impartial adjudication of the trial referred to above.

For the reasons outlined above, I decided that the part of Document 32 marked 's37(2)(a)' is exempt from disclosure under section 37 of the FOI Act.

## 4.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of Document 37 marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process.

### Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the conditionally exempt information in Document 37 is an integral part of the deliberative content or is embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I decided that the parts of Document 37 marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the parts of Document 49 marked 's47F' include personal information about a number of individuals.



## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within Document 49 would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the parts of Document 49 marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

## Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would, in some instances, provide limited information which may inform debate on a matter that some in the community may consider to be matters of public importance, however I consider this factor to be limited in its overall contribution to the factors favouring access
- would promote limited oversight of public expenditure
- would not allow you access to your own personal information.

## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the provision of advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Aaron O'Neill  
Assistant Secretary  
Ministerial, Parliamentary & Cabinet Branch  
People, Culture and Change Division

Date: 7 May 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-278

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	15/01/2024	SB23-000851 - Regional Based Staff	2	Access granted to relevant material	s22
2.	02/02/2024	SB23-000852 - Canberra Consolidation	5	Access granted to relevant material	s22
3.	05/02/2024	SB23-000853 - Graduates	5	Access granted to relevant material	s22
4.	16/01/2024	SB23-000854 - Online Safety Campaign	3	Access granted to relevant material	s22
5.	18/01/2024	SB24-000002 - Implementation of the Department's 2023 Capability Review	9	Access granted to relevant material	s22
6.	22/01/2024	SB23-000855 - Budget Funding	19	Access granted to relevant material	s22
7.	16/01/2024	SB23-000856 - Consultancy and Non-Consultancy Contracts	87	Access granted to relevant material	s22
8.	16/01/2024	SB23-000857 - The Big 4	10	Access granted to relevant material	s22
9.	23/01/2024	SB23-000858 - Transport and Infrastructure Net Zero Roadmap and Action Plan	4	Access granted to relevant material	s22
10.	16/01/2024	SB23-000859 - Reducing greenhouse gas emissions: Summary of Portfolio Actions	6	Access granted to relevant material	s22
11.	06/02/2024	SB23-000860 - Safeguard Mechanism: Interaction with the Infrastructure, Transport and Regional Development portfolio	6	Access granted to relevant material	s22
12.	15/01/2024	SB23-000861 - First Nations Partnerships	5	Access granted to relevant material	s22
13.	15/01/2024	SB23-000954 - Road Vehicle Standards Act Implementation	12	Access granted to relevant material	s22
14.	25/01/2024	SB23-000955 - National Road Safety Strategy and Action Plan	8	Access granted to relevant material	s22
15.	24/01/2024	SB23-000956 - Road Safety Grants	6	Access granted to relevant material	s22
16.	02/02/2024	SB23-000957 - Road Safety Program	10	Access granted to relevant material	s22
17.	03/02/2024	SB23-000958 - Infrastructure Sub-programs	13	Access granted to relevant material	s22
18.	18/01/2024	SB23-000959 - Infrastructure Investment Program – Budget Overview	7	Access granted to relevant material	s22
19.	12/01/2024	SB23-000960 - Infrastructure Investment Program Delivery	3	Access granted to relevant material	s22
20.	25/01/2024	SB23-000961 - Infrastructure Investment Program Reform	9	Access granted to relevant material	s22
21.	12/01/2024	SB23-000962 - QLD Infrastructure Investment (Road and Rail)	8	Access granted to relevant material	s22
22.	12/01/2024	SB23-000963 - WA Infrastructure Investment (Road and Rail)	4	Access granted to relevant material	s22
23.	12/01/2024	SB23-000964 - NT Infrastructure Investment (Road and Rail)	3	Access granted to relevant material	s22
24.	01/02/2024	SB23-000965 - NSW Infrastructure Investment (Road and Rail)	4	Access granted to relevant material	s22
25.	15/01/2024	SB23-000966 - ACT Infrastructure Investment (Road and Rail)	3	Access granted to relevant material	s22
26.	15/01/2024	SB23-000967 - Infrastructure Investment Program (IIP) Review Administration	4	Access granted to relevant material	s22

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
27.	15/01/2024	SB23-000968 - VIC Infrastructure Investment (Road and Rail)	4	Access granted to relevant material	s22
28.	15/01/2024	SB23-000969 - SA Infrastructure Investment (Road and Rail)	3	Access granted to relevant material	s22
29.	15/01/2024	SB23-000970 - TAS Infrastructure Investment (Road and Rail)	3	Access granted to relevant material	s22
30.	15/01/2024	SB23-000971 - Australian Government Response to the Inland Rail Review	15	Access granted to relevant material	s22
31.	20/01/2024	SB23-000972 - Inland Rail	8	Access granted to relevant material	s22
32.	20/01/2024	SB23-000973 - Australian Rail Track Corporation	6	Partial access granted	s22 s37(2)(a)
33.	19/01/2024	SB23-000974 - National Intermodal Corporation—intermodal terminals precincts	3	Access granted to relevant material	s22
34.	16/01/2024	SB23-000975 - Western Sydney International (Nancy-Bird Walton) Airport	3	Access granted to relevant material	s22
35.	22/01/2024	SB23-000976 - High Speed Rail Authority	2	Access granted to relevant material	s22
36.	22/01/2024	SB23-000977 - 2032 Games – Brisbane Arena	6	Access granted to relevant material	s22
37.	22/01/2024	SB23-000978 - 2032 Games – Minor Venues Program	13	Partial access granted	s22 s47C
38.	18/01/2024	SB23-000979 - 2032 Games – 60-day review, delivery authority and IGA	13	Access granted to relevant material	s22
39.	22/01/2024	SB23-000980 - Independent Review of AIS Infrastructure	7	Access granted to relevant material	s22
40.	22/01/2024	SB23-000981 - Infrastructure Market Capacity	3	Access granted to relevant material	s22
41.	12/01/2024	SB23-000982 - Infrastructure Australia Review and Implementation	5	Access granted to relevant material	s22
42.	05/02/2024	SB23-000932 - State of Aviation Sector	7	Access granted to relevant material	s22
43.	09/01/2024	SB23-000933 - Aviation and Net Zero	2	Access granted to relevant material	s22
44.	15/01/2024	SB23-000934 - Regional Aviation Security	3	Access granted to relevant material	s22
45.	29/02/2024	SB23-000935 - Regional Aviation Programs	4	Access granted to relevant material	s22
46.	05/01/2024	SB23-000936 - Aviation White Paper	5	Access granted to relevant material	s22
47.	05/02/2024	SB23-000937 - Melbourne Airport third runway	3	Access granted to relevant material	s22
48.	05/01/2024	SB23-000938 - Brisbane Airport, including Noise Issues	7	Access granted to relevant material	s22
49.	06/02/2024	SB23-000939 - Aircraft Noise Dispensation – Sydney Freight	3	Partial access granted	s22 s47F
50.	08/01/2024	SB23-000940 - Per and Polyfluoroalkyl Substances (PFAS)	6	Access granted to relevant material	s22
51.	15/01/2024	SB23-000941 - Aviation Agencies: Funding and Current Issues	4	Access granted to relevant material	s22
52.	19/01/2024	SB23-000942 - Emerging Aviation Technologies Policy	3	Access granted to relevant material	s22
53.	18/01/2024	SB23-000943 - Western Sydney International Airport - Airspace & Environment	3	Access granted to relevant material	s22

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
54.	08/01/2024	SB23-000944 - Bilateral Air Services Agreements	2	Access granted to relevant material	s22
55.	17/01/2024	SB23-000945 - Road User Charging Reform	2	Access granted to relevant material	s22
56.	22/01/2024	SB23-000946 - Heavy Vehicle National Law Reforms	2	Access granted to relevant material	s22
57.	02/02/2024	SB23-000947 - Disability Transport Standards	2	Access granted to relevant material	s22
58.	09/01/2024	SB23-000948 - National Freight and Supply Chain Strategy	2	Access granted to relevant material	s22
59.	05/01/2024	SB23-000949 - Connected and Automated Vehicles	2	Access granted to relevant material	s22
60.	07/02/2024	SB23-000950 - Cleaner Cars – New Vehicle Efficiency Standard	3	Access granted to relevant material	s22
61.	05/02/2024	SB23-000951 - Maritime Emission Reduction National Action Plan	2	Access granted to relevant material	s22
62.	08/01/2024	SB23-000952 - Reducing Transport Emissions	4	Access granted to relevant material	s22
63.	12/01/2024	SB23-000953 - Strategic Fleet	2	Access granted to relevant material	s22
64.	15/01/2024	SB23-000864 - Regional Policy	7	Access granted to relevant material	s22
65.	21/12/2024	SB23-000867 - Regional Development Australia Committees	5	Access granted to relevant material	s22
66.	15/01/2024	SB23-000870 - Local Government – Engagement and Financial Assistance	3	Access granted to relevant material	s22
67.	01/02/2024	SB23-000871 - RDA Brisbane Governance	2	Access granted to relevant material	s22
68.	12/01/2024	SB23-000872 - Growing Regions Program	3	Access granted to relevant material	s22
69.	10/01/2024	SB23-000873 - Delivery of Legacy Regional Programs	8	Access granted to relevant material	s22
70.	11/01/2024	SB23-000874 - Thriving Suburbs	1	Access granted to relevant material	s22
71.	11/01/2024	SB23-000875 - Investing in Our Communities	3	Access granted to relevant material	s22
72.	08/01/2024	SB23-000876 - Priority Community Infrastructure Program	3	Access granted to relevant material	s22
73.	08/01/2024	SB23-000877 - Major Projects	4	Access granted to relevant material	s22
74.	01/02/2024	SB23-000878 - Indian Ocean Territories Key Issues	6	Access granted to relevant material	s22
75.	09/01/2024	SB23-000879 - ACT, NT and Jervis Bay Territory Key Issues	5	Access granted to relevant material	s22
76.	05/02/2024	SB23-000880 - Norfolk Island Key Issues	5	Access granted to relevant material	s22
77.	10/01/2024	SB23-000881 - Norfolk Island Regional Council	5	Access granted to relevant material	s22
78.	01/02/2024	SB23-000882 - Norfolk Island Governance Committee & JSCNET findings	5	Access granted to relevant material	s22
79.	01/02/2024	SB23-000883 - City and Regional Deals	9	Access granted to relevant material	s22
80.	15/01/2024	SB23-000884 - Macquarie Point Precinct	4	Access granted to relevant material	s22
81.	06/02/2024	SB23-000885 - Northern Australia Infrastructure Facility	8	Access granted to relevant material	s22
82.	02/02/2024	SB23-000886 - Middle Arm and Pilbara Ports Upgrades	6	Access granted to relevant material	s22
83.	01/02/2024	SB23-000887 - Central Australia Plan - \$50M Infrastructure Package	5	Access granted to relevant material	s22



Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
84.	02/02/2024	SB23-000888 - Northern Australia Agenda	7	Access granted to relevant material	s22
85.	04/01/2024	SB23-000889 - Northern Australia Indigenous Reference Group	2	Access granted to relevant material	s22
86.	10/01/2024	SB23-000890 - National Urban Policy	3	Access granted to relevant material	s22
87.	23/01/2024	SB23-000891 - Precincts and Partnerships Programs (rPPP and uPPP)	3	Access granted to relevant material	s22
88.	10/01/2024	SB23-000892 - Housing Support Program	7	Access granted to relevant material	s22



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-314

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 20 March 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Documents regarding the grant application for the Armstrong Creek Stadium - Regional High Ball Centre project in Victoria between 22 May 2022 and 1 March 2024. This is a grant application which, as at May 2023, was listed by the Department as being administered under the Priority Community Infrastructure program.

Documents relevant to this request include but are not limited to documents which refer to the Armstrong Creek Stadium - Regional High Ball Centre project in:

- a) any communications between the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
- b) any communications between the Minister's office and the Department;
- c) any communications between the Minister for Regional Development, Local Government and Territories (the Regional Minister) and the Department;
- d) any communications between the Regional Minister's office and the Department;
- e) any communications between the applicant and the Department; and
- f) any communications between the Department and any other Commonwealth Government agency.

## 1.1 Modification of scope of request

On 15 March 2024, following formal consultation with you in the form of a notice of practical refusal, you agreed to modify the scope of your request to the following:

As relevant to the Armstrong Creek Stadium - Regional High Ball Centre project in Victoria under the Priority Community Infrastructure Program, documents between 1 September 2023 and 1 February 2024 that are:

- a) copies of documents recommending approval to remove the project from the Priority Community Infrastructure Program; and
- b) copies of documents from the Department to the City of Greater Geelong Council advising of the removal of the project from consideration under the Priority Community Infrastructure Program.

Excluded from the above request are any commercial or financial details of the applicant or any third-party organisation that may be referenced within documents and the names or personal identifying information of any person other than the principle contact officers of applicant organisations.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

I have identified one document that contains information that is relevant to your request. This document was in the possession of the Department when your request was received.

I have decided to grant partial access to the document.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to parts of document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the

processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the *'deliberative process'* generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that *'deliberative matter'* is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that parts of the document marked 's47C' contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that parts of the document marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the document captured by your request contains material which can reasonably be regarded as irrelevant to your request. Your request relates specifically to a grant application for the Armstrong Creek Stadium. The document captured by your request, whilst containing information specific to that grant application, also contains information relating more broadly to the grant program including information regarding other specified projects. As such, information contained in the document goes beyond the application specified in your request, and can reasonably be regarded as falling outside the scope of your request.

The document also contains personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures

and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, an edited copy of the document has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the document released to you.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the document captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Katrina Kendall  
Assistant Secretary  
Major Projects and Governance Branch

Date: 30 April 2024



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-392

s22(1)(a)(ii)

Dear s22(1)  
(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 11 April 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

VIN numbers of all the vehicles that have used the following MRE numbers for vehicles that have been submitted on the RAV so we can verify their authorised use.

MRE-000002	MRE-000053	MRE-000101	MRE-000145	MRE-000195	MRE-000221
MRE-000003	MRE-000054	MRE-000102	MRE-000151	MRE-000196	MRE-000222
MRE-000006	MRE-000056	MRE-000108	MRE-000158	MRE-000198	MRE-000223
MRE-000011	MRE-000058	MRE-000109	MRE-000159	MRE-000200	MRE-000225
MRE-000012	MRE-000060	MRE-000110	MRE-000160	MRE-000202	MRE-000227
MRE-000013	MRE-000061	MRE-000112	MRE-000161	MRE-000203	MRE-000231
MRE-000014	MRE-000062	MRE-000114	MRE-000162	MRE-000203	MRE-000233
MRE-000015	MRE-000065	MRE-000116	MRE-000166	MRE-000204	MRE-000234
MRE-000028	MRE-000066	MRE-000118	MRE-000168	MRE-000205	MRE-000235
MRE-000029	MRE-000070	MRE-000119	MRE-000169	MRE-000206	MRE-000236
MRE-000030	MRE-000071	MRE-000120	MRE-000171	MRE-000209	MRE-000237
MRE-000031	MRE-000072	MRE-000122	MRE-000173	MRE-000209	MRE-000238
MRE-000035	MRE-000073	MRE-000125	MRE-000179	MRE-000211	MRE-000239
MRE-000036	MRE-000079	MRE-000127	MRE-000181	MRE-000212	MRE-000240
MRE-000038	MRE-000084	MRE-000129	MRE-000182	MRE-000213	MRE-000242
MRE-000039	MRE-000086	MRE-000130	MRE-000183	MRE-000214	MRE-000243
MRE-000040	MRE-000089	MRE-000131	MRE-000185	MRE-000215	MRE-000245
MRE-000041	MRE-000090	MRE-000132	MRE-000186	MRE-000216	MRE-000247
MRE-000042	MRE-000092	MRE-000135	MRE-000187	MRE-000217	MRE-000249
MRE-000045	MRE-000099	MRE-000136	MRE-000188	MRE-000218	MRE-000249
MRE-000052	MRE-000100	MRE-000141	MRE-000191	MRE-000220	MRE-000250



MRE-000252	MRE-000306	MRE-000361	MRE-000382	MRE-000412	MRE-000437
MRE-000253	MRE-000307	MRE-000362	MRE-000383	MRE-000413	MRE-000450
MRE-000257	MRE-000310	MRE-000363	MRE-000386	MRE-000414	MRE-000451
MRE-000262	MRE-000311	MRE-000364	MRE-000390	MRE-000415	MRE-000461
MRE-000263	MRE-000315	MRE-000367	MRE-000391	MRE-000423	MRE-000471
MRE-000264	MRE-000318	MRE-000368	MRE-000397	MRE-000425	MRE-000496
MRE-000273	MRE-000320	MRE-000369	MRE-000398	MRE-000426	MRE-000513
MRE-000275	MRE-000328	MRE-000370	MRE-000400	MRE-000430	MRE-000514
MRE-000276	MRE-000329	MRE-000375	MRE-000403	MRE-000431	
MRE-000279	MRE-000348	MRE-000376	MRE-000405	MRE-000432	
MRE-000289	MRE-000349	MRE-000380	MRE-000406	MRE-000433	
MRE-000299	MRE-000353	MRE-000381	MRE-000411	MRE-000434	

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

You have requested access to data that is held in computer systems ordinarily available to the Department. Pursuant to section 17 of the FOI Act, the Department has used its computer systems to produce a written discrete document that contains the information you are seeking to access.

I have decided to grant partial access to this document, being a 62-page list of Vehicle Identification Numbers (VINs).

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of the document created in response to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

Although the part of the document released to you and marked 's47F' does not, on the face of it, include information that in isolation readily identifies any person, disclosure of this information would, in conjunction with information readily available from other sources, allow a number of individuals to be identified.

Specifically, Table 2 in the document is a list of VINs where the corresponding entries on the Register of Approved Vehicles (RAV) contain personal information about a number of individuals. Although the RAV is publicly accessible, to access this personal information requires a user to search for a specific VIN. I am satisfied that the release of these VINs would in effect disclose information that identifies multiple individuals by facilitating a user to access entries on the RAV where that information is available.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

- 6.142 Key factors for determining whether disclosure is unreasonable include:
- the author of the document is identifiable
  - the documents contain third party personal information
  - release of the documents would cause stress on the third party
  - no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the release of information marked '47F' contained within the document would, in effect, constitute an unreasonable disclosure of the personal information of a number of individuals for the following reasons:

- the individuals are identifiable through the personal information contained in RAV entries associated with the conditionally exempt information
- the conditionally exempt information is not well known and is not available from publicly accessible sources – there is no publicly accessible list of all VINs that are registered on the RAV
- the persons to whom the personal information on the RAV relates are not known to be (or to have been) associated with the information contained within the document for release
- the individuals identified in such RAV entries are also likely to have had their personal information added to the publicly-accessible register by another party, so would not expect their information to have been placed in the public domain
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the disclosure of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- detriment may be caused to the individuals to whom the personal information on the RAV relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

In particular, although the RAV is a publicly accessible database, entries are only accessible by searching for a specific VIN number. The ability to identify valid VIN numbers that are linked to an entry on the RAV is limited, and providing a list of VIN numbers where the corresponding entry on the RAV contains personal information would significantly facilitate any attempt to source such personal information.

For the reasons outlined above, I decided that releasing the part of the document marked 's47F' would result in an unreasonable disclosure of personal information, and it is there conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that disclosure could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy and that this factor weighs heavily against disclosure of the conditionally exempt information at this time.

The Department is committed to complying with its obligations under the Privacy Act 1988, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information cause a loss of confidence in the Commonwealth Government

- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.3 Section 22 – deletion of exempt material**

Section 22 of the FOI Act applies to documents containing exempt material and allows an agency to delete such material from a document.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the document being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request.

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

If you are dissatisfied with my decision, you may apply for a review of it.

### **7.1 Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

A/g Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 30 April 2024



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-265

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 14 February 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

The full departmental modelling for the projected fleet emission outcomes for car companies under Option A and Option B of the Australian New Vehicle Efficiency Standard, in the first and second years.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified 5 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to refuse access to 5 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 4.1 Section 34 - Cabinet documents

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.5 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 27-29 of the Cabinet Handbook state:

27. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.
28. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive Governments have relied on the convention that their views, either written or spoken will remain confidential well into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.
29. This convention provides the Executive of Government with the opportunity to contest policy ideas in a highly confidential manner in order to ensure that the collective decision that ultimately arises from the Cabinet's deliberations is the best possible policy decision for the administration of the Government.

I have had regard to the content of the document marked 's34(3)' in the schedule and am satisfied that they contain information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that the document marked 's34(3)' in the schedule are exempt under section 34 of the FOI Act.

### 4.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.



## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents marked 's47C' in the schedule contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

## Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents is an integral part of the deliberative content.

For the reasons outlined above, I decided that the documents marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

#### Business information

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs. The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.

Paragraph 6.194 of the FOI Guidelines states that ‘profession’ is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The documents marked ‘s47G’ in the schedule contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

#### Unreasonable adverse effect of disclosure

Paragraph 6.187 of the FOI Guidelines states that the presence of ‘unreasonably’ in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

## Prejudice future supply of information

Paragraphs 6.198-6.200 of the FOI Guidelines state:

- 6.198 This limb of the conditional exemption comprises two parts:
- a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
  - the reduction will prejudice the operations of the agency
- 6.199 There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be sufficient to prejudice the future supply of information. Disclosure of the person's identity may also be conditionally exempt under s 47F (personal privacy). In these cases, consideration should be given to whether the information may be disclosed without also disclosing the identity of the person supplying the information.
- 6.200 Where the business information in question can be obtained compulsorily, or is required for some benefit or grant, no claim of prejudice can be made. No prejudice will occur if the information in issue is routine or administrative (that is, generated as a matter of practice).

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the documents marked 's47G' in the schedule are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

## Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the Department's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Sally Todd  
Assistant Secretary  
Land Transport Policy Branch  
Surface Transport Emissions and Policy Division

Date: 24 April 2024

## ATTACHMENT A

## SCHEDULE OF DOCUMENTS FOI 24-265

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	13/11/2023	Summary of cost-benefit analysis	2	Access refused in full	s34
2.	13/11/2023	FES CBA v29_2080	N/A	Access refused in full	s47G s47C
3.	13/11/2023	FES model v29_2080 – Option A	N/A	Access refused in full	s47G s47C
4.	13/11/2023	FES model v29_2080 – Option B	N/A	Access refused in full	s47G s47C
5.	13/11/2023	FES model v29_2080 – Option C	N/A	Access refused in full	s47G s47C

## ATTACHMENT B

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-274

s22(1)(a)  
(ii)

Dear s22(1)  
(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 22 February 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

The Contract RDAF 200126 – Lucky Bay Harbor Extension

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified one document relevant to your request. This document was in the possession of the Department when your request was received.

I have decided to grant partial access to one document.

#### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the document relevant to your request are set out below.

##### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).



## Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the parts of the document marked 's47F' includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the document marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Section 47G – Business information

Section 47G(a) of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

### Business information

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs. The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.

The parts of the document marked ‘s47G’ contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

### Unreasonable adverse effect of disclosure

Paragraph 6.187 of the FOI Guidelines states that the presence of ‘unreasonably’ in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the parts of the document marked ‘s47G’ are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the document captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the document captured by your request
- submissions from a third party consulted about the document which contains information concerning them

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

If you are dissatisfied with my decision, you may apply for a review of it.

## 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

## 7.2 Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Dr Jennie Hood  
Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 12 April 2024



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-254

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 27 January 2024 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

details of any reports or information the Department holds in relation to any reports of safety defects or issues reported via ROVER or from other sources concerning Volvo XC-40 passenger cars from 2021 onwards.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Background

I have determined that some of the information you have requested is publicly available. Under section 4 of the FOI Act, the definition of a 'document' which may be subject to a request under the Act does not include:

- *material maintained for reference purposes that is otherwise publicly available.*

These documents can be found at the links provided below:

- <https://www.vehiclerecalls.gov.au/recalls/rec-005877>
- <https://www.vehiclerecalls.gov.au/recalls/rec-005727>

As such, I consider that these documents fall outside the scope of the FOI Act, and I have not considered them in my decision.

## 4 Decision

I have identified 7 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant partial access to 3 documents
- refuse access to 4 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 5.1 Section 45 - Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment.

I am satisfied that the documents or parts of documents marked 's45' consist of information:

- that is specifically identified within the documents as being confidential in nature
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain
- that was communicated and received on the basis of mutual understanding of confidence, and that this mutual understanding exists at the time of the communication
- in circumstances in which disclosure of the information will be without the authority of the affected third party, and
- in circumstances where disclosure of the information would cause detriment to the party who provided the confidential information to the Department. The detriment in this instance would involve financial loss to the affected third party.

For the reasons outlined above, I decided that the document marked 's45' in the schedule is exempt from disclosure under section 45 of the FOI Act.



## 5.2 Section 47E - Documents affecting certain operations of agencies

Section 47E(a) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency.

Paragraph 6.110 of the FOI Guidelines states that the prejudicial effect could be regarded as one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes.

I am satisfied that the effect of disclosing the documents marked 's47E(a)' in the schedule would prejudice the effectiveness of procedures for the conduct of examinations by this Department, and that this prejudicial effect would cause bias or change to the expected results, which in turn would lead to detrimental and/or disadvantageous outcomes to those examinations.

Examples of testing methods considered by the AAT include:

- safety audits and testing regimes<sup>1</sup>
- risk assessment matrices<sup>2</sup>
- accident investigation techniques<sup>3</sup>.

Paragraph 6.108 of the FOI Guidelines sets out circumstances where the AAT has accepted that disclosure of a testing method may prejudice the method, including:

- providing forewarning of the usual manner of audits
- permitting analysis of responses to tests or examinations or information gathered during an audit
- facilitating cheating, fraudulent or deceptive conduct by those being tested or audited
- permitting pre-prepared responses which would compromise the integrity of the testing process.

Having regard to the above, I am satisfied that the examination being conducted by the Department is an examination that meets these characteristics.

For the reasons outlined above, I decided that the documents marked 's47E(a)' in the schedule are conditionally exempt from disclosure under section 47E of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 5.3 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

<sup>1</sup> See Vasta and McKinnon and Civil Aviation Safety Authority [2010] AATA 499

<sup>2</sup> Lobo and Secretary, Department of Education, Science and Training [2007] AATA 1891

<sup>3</sup> Vasta and McKinnon and Civil Aviation Safety Authority [2010] AATA 499

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

- 6.142 Key factors for determining whether disclosure is unreasonable include:
- the author of the document is identifiable
  - the documents contain third party personal information
  - release of the documents would cause stress on the third party
  - no public purpose would be achieved through release.

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 5.4 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the

business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The documents and parts of documents marked 's47G' in the schedule contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

## Prejudice future supply of information

Paragraphs 6.198-6.200 of the FOI Guidelines state:

- 6.198 This limb of the conditional exemption comprises two parts:
- a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
  - the reduction will prejudice the operations of the agency.
- 6.199 There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be sufficient to prejudice the future supply of information. Disclosure of the person's identity may also be conditionally exempt under s 47F (personal privacy). In these cases, consideration should be given to whether the information may be disclosed without also disclosing the identity of the person supplying the information.
- 6.200 Where the business information in question can be obtained compulsorily, or is required for some benefit or grant, no claim of prejudice can be made. No prejudice will occur if the information in issue is routine or administrative (that is, generated as a matter of practice).

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the documents or parts of the documents marked 's47G(1)(a)' or 's47G(1)(b)' in the schedule are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 5.5 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific, and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)

- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the effectiveness of testing or auditing procedures
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to prejudice the Department's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I

am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## 5.6 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 6 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 7 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 8 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 9 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Acting Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 9 April 2024

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of pages	Decision on access	Provision of FOI Act
1.	06/06/2022	Email – FIRU to Vehicle Investigations Section Attachments: a. NSW Fair Trading notification form b. photo c. photo d. photo	6	Partial access granted	s22 s47F
2.	08/08/2022	Vehicle Safety Report – Investigation Overview Subject: Volvo XC40 fire report	3	Partial access granted	s22 s47F
3.	05/10/2022	Correspondence	3	Access refused in full	s45 s47G(1)(a)
4.	06/06/2022 - 10/01/2023	Compliance and Enforcement 'Report Runsheet' created 1 February 2024	2	Partial access granted	s22 s47F s47G(1)(b)
5.	25/01/2024	Internal risk assessment for prioritising work load	1	Access refused in full	S47E(a)
6.	21/07/2023	Internal risk assessment for prioritising work load	1	Access refused in full	S47E(a)
7.	23/07/2023	Advice Report	3	Access refused in full	s45 s47G(1)(b)

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-252

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 22 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

1. Names of all aviation industry specific programs where the recipient was an airport owner or operator (for example, Regional Airports Program)
2. Eligibility criteria of the above programs (with reference to #1)
3. All applications submitted for the above program (with references to #1)
4. All post-grant reviews or assessments (if applicable) (with reference to #1).

#### 1.1 Clarification/Modification of scope of request

On 2 February 2024, the Department issued you with a notification that we considered the work involved in processing your request in its current form would substantially and unreasonably divert the resourcing of the Department from its other operations to due to its size and broad scope. You were provided with an opportunity to revise your request.

On 16 February 2024, following the formal request consultation process, you agreed to modify the scope of your request to the following:

1. Aviation industry specific programs where the recipient one of the following airport owner or operator/s:
  - a. Ballina Byron Airport, NSW
  - b. Toowoomba Wellcamp Airport, QLD
  - c. Latrobe Airport, VIC
  - d. Bendigo Airport, VIC
  - e. King Island Airport, TAS
  - f. Flinders Island, TAS

- g. Fitzroy Crossing, WA
- h. Bremer Bay, WA
2. All post-grant reviews or assessments (if applicable) (with reference to #1).
3. For period 1 Jan 2018 - 31 Dec 2023

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

The right of access under the FOI Act is limited to a document in the possession of the Department.

A 'document of an agency' is limited to a document in the possession of the Department, whether created in the Department or received in the Department (section 4 of the FOI Act refers).

Following reasonable searches being undertaken in relation to your request, I have identified 8 documents that are relevant to the revised scope of your request. These documents were in the possession of the Department when your request was received.

Some of the documents you have requested do not exist due to:

- one or more of the program recipients having terminated their projects and repaid any funds they received, resulting in no final report being available
- some of the projects currently being in progress, resulting in no final report having yet been submitted
- one or more of the projects having submitted a final report after the dates specified in the scope of your request.

In relation to the documents that do exist in the possession of the Department, I have decided to grant partial access to 8 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an

individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

### **Unreasonable Disclosure of Personal Information**

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

- 6.142 Key factors for determining whether disclosure is unreasonable include:
- the author of the document is identifiable
  - the documents contain third party personal information
  - release of the documents would cause stress on the third party

- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.2 Section 47G – Business information

Section 47G(1)(a) of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the

business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that parts of the documents marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.



- could reasonably be expected to prejudice the Department's ability to obtain similar confidential information in the future

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.4 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. This information consists of one email requesting clarification of an invoice, which could not reasonably be regarded as being part of any post-grant review or assessment. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Ben Vincent  
Assistant Secretary  
Domestic Policy and Programs Branch  
Domestic Aviation and Reform Division

Date: 5 April 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-252

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	08/02/2024	RAPII000045 - Brisbane Wellcamp Combined final end of project report	48	Partial access granted	s47F s47G
2.	20/12/2022	RAPI000080 - EOPR - Combined Documents - CSM ASSESSED [Bendigo]	24	Partial access granted	s22 s47F s47G
3.	22/12/2023	RAPII000067 Greater Bendigo City Council Combined final report	26	Partial access granted	s47F s47G
4.	14/09/2022	RAUP000050-Fitzroy Crossing Final Report Complete	23	Partial access granted	s47F s47G
5.	26/04/2022	DASCS. Ballina Airport. Final Report from Airport	6	Partial access granted	s47F s47G
6.	05/08/2022	DASCS. Ballina Airport. Final Grant Closure Report	3	Partial access granted	s47F s47G
7.	28/03/2022	DASCS. West Wellcamp Airport. Final Report	10	Partial access granted	s47F s47G
8.	05/08/2022	DASCS. West Wellcamp Airport. Grant Closure Report	3	Partial access granted	s47F s47G

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-269

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 15 February 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

All correspondence (including but not limited to emails, texts, messaging) from the Department and/or Minister Catherine King to Australian Maritime Safety Authority CEO Mick or any member of the AMSA Board with respect to the Evaluation of the Maritime Aids to Navigation Request for Tender.

Any documents, emails, or other correspondence from the Australian Maritime Safety Authority to the Department or Minister Catherine King:

- a) notifying the Department or the Minister that AMSA was about to or had refused to renew the tender of AMG Group for the maintenance of Aids to Navigation
- b) advising the Department of the Minister of any alternatives to the tender process for the maintenance of the Aids to Navigation and/or what those alternatives are
- c) and any replies from the Department or the Minister relating to (a) and (b) above.

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified 5 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 1 document
- grant partial access to 4 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

#### **4 Finding of facts and reasons for decision**

My findings of fact and reasons for deciding that exemptions apply to the parts of the documents relevant to your request are set out below.

##### **4.1 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. In addition, the documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As such, edited copies of the documents have been prepared in accordance with section 22(1)(a)(ii) of the FOI Act.

As I decided that some information you have requested is exempt from disclosure, I have prepared edited copies of the relevant documents being released to you, by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

##### **4.2 Section 47C – Deliberative processes**

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents, or parts thereof marked 's47C' in the schedule contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

## Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents is an integral part of the deliberative content.

For the reasons outlined above, I decided that the documents, or parts thereof marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.



In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

### **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely,

s22(1)(a)(ii)



Megan Scott  
Assistant Secretary  
Maritime and Shipping Branch  
Surface Transport Emissions and Policy Division

Date: 28 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-269

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	28/07/2023	Email from AMSA to Minister Attachment	1 66	Access granted to relevant information	s22 s22
2.	08/09/2023	Email from AMSA to Department Attachment	1 3	Partial access granted	s22 s47C
3.	28/09/2023	Email from AMSA to Minister Attachment	1 53	Partial access granted	s22 s22 s47C
4.	11/10/2023	Email from AMSA to Department	3	Partial access granted	s22 s47C
5.	11/10/2023	Email from AMSA to Department Attachment	1 6	Partial access granted	s22 s22 s47C

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-259

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 7 February 2024 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

Documents held by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) relating to the appointment of a Departmental official to the Board of the Australian Maritime Safety Authority (AMSA) to follow the term of Ms Marisa Purvis-Smith expiring 30 June 2022. Relevant documents could include emails, correspondence and letters, briefing notes, expressions of interest, talking points, text messages or communications via digital messaging services relating to the process of selecting a suitable representative, the process of appointing a suitable representative or the appropriateness of filling the vacancy for a department official on the AMSA Board, including:

- a) Internal communications between department officials;
- b) Communications, including ministerial briefings, between the Department and the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister) or the Minister's office; and
- c) Communications between the Department and AMSA.

The time period for this request is commencing 1 June 2022 and 25 October 2023.

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified 17 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 11 documents
- grant partial access to 5 documents
- refuse access to 1 document

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

#### 4.1 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. In addition, the documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. This information is marked 22(1)(a)(ii) in the documents released to you.

As I decided that some information you have requested is exempt from disclosure, I have prepared edited copies of the relevant documents being released to you, by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

#### 4.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents, or parts thereof marked 's47C' in the schedule contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

## Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents is an integral part of the deliberative content.

For the reasons outlined above, I decided that the documents, or parts thereof marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward



In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

### **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

**Further information**

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)



Megan Scott  
Assistant Secretary  
Maritime and Shipping Branch  
Surface Transport Emissions and Policy Division

Date: 28 March 2024

Released under the FOI Act 1982 by the Department of Infrastructure,  
Transport, Regional Development, Communications and the Arts

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS - FOI 24-259

Doc No.	Date of document	Description of document	No. of Pages	Decision on access	Provision of FOI Act
1.	24/01/2023	Internal email	5	Partial access granted	s22 s47C
2.	11/09/2023	Email from the Department of the Prime Minister and Cabinet to the Department	2	Access granted to relevant information	s22
3.	23/08/2023	Internal email	5	Access granted to relevant information	s22
4.	21/09/2023	Internal email	3	Access granted to relevant information	s22
5.	18/10/2023	Email from Australian Maritime Safety Authority to the Department Attachment	2 1	Access granted to relevant information	s22 -
6.	31/05/2023*	Back Pocket Brief – EC23-004327	7	Partial access granted	s22 s47C
7.	18/10/2023*	Back Pocket Brief – EC23-005145	6	Access granted to relevant information	s22
8.	27/06/2022	Draft Ministerial Submission	3	Access refused in full	s47C
9.	18/10/2023	Ministerial Submission – MS23-004353	7	Access granted to relevant information	s22
10.	07/09/2023	Internal email Attachment	1 21	Partial access granted	s22 s22 s47C
11.	18/10/2023	Internal email Attachment	1 1	Access granted to relevant information	s22 -
12.	21/07/2022	Internal email Attachment	1 1	Access granted to relevant information	s22 s22
13.	29/06/2022	Internal email Attachment	1 2	Access granted to relevant information	s22 s22
14.	29/07/2022	Internal email Attachment	1 7	Access granted to relevant information	s22 s22
15.	16/09/2022	Departing staff handover notes	5	Access granted to relevant information	s22
16.	28/06/2022	Internal email	3	Partial access granted	s22 s47C
17.	24/06/2022	Internal email Attachment A Attachment B	3 1 1	Partial access granted	s22 s47C s47C

\* Latest possible action date of the document where last action date could not be verified.

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-257

s22(1)

(a)(ii)

Dear s22(1)

### Decision on your Freedom of Information Request

I refer to your request of 31 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

VIN numbers of all the vehicles that have used the following MRE numbers for vehicles that have been submitted on the RAV so we can verify their authorised use.

MRE-00004	MRE-00067	MRE-000111	MRE-000193	MRE-000316
MRE-00008	MRE-00068	MRE-000113	MRE-000192	MRE-000319
MRE-00009	MRE-00069	MRE-000115	MRE-000197	MRE-000321
MRE-00010	MRE-00074	MRE-000121	MRE-000199	MRE-000331
MRE-00018	MRE-00075	MRE-000126	MRE-000244	MRE-000338
MRE-00016	MRE-00076	MRE-000133	MRE-000254	MRE-000340
MRE-00017	MRE-00077	MRE-000134	MRE-000256	MRE-000343
MRE-00032	MRE-00078	MRE-000137	MRE-000258	MRE-000345
MRE-00033	MRE-00082	MRE-000142	MRE-000265	MRE-000346
MRE-00048	MRE-00083	MRE-000144	MRE-000269	MRE-000354
MRE-00043	MRE-00087	MRE-000143	MRE-000270	MRE-000357
MRE-00047	MRE-00091	MRE-000147	MRE-000271	MRE-000365
MRE-00051	MRE-00093	MRE-000148	MRE-000274	MRE-000373
MRE-00049	MRE-00094	MRE-000149	MRE-000280	MRE-000384
MRE-00055	MRE-00095	MRE-000150	MRE-000284	MRE-000393
MRE-00044	MRE-00097	MRE-000152	MRE-000285	MRE-000404
MRE-00046	MRE-000103	MRE-000153	MRE-000297	MRE-000417
MRE-00050	MRE-000104	MRE-000163	MRE-000300	MRE-000418
MRE-00059	MRE-000105	MRE-000164	MRE-000303	MRE-000429
MRE-00063	MRE-000106	MRE-000167	MRE-000304	MRE-00043
MRE-00064	MRE-000107	MRE-000172	MRE-000314	

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

You have requested access to data that is held in computer systems ordinarily available to the Department. Pursuant to section 17 of the FOI Act, the Department has used its computer systems to produce a written discrete document that contains the information you are seeking to access.

I have decided to grant partial access to this document, being a 34-page list of Vehicle Identification Numbers (VINs).

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of the document created in response to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

Although the part of the document released to you and marked 's47F' does not, on the face of it, include information that in isolation readily identifies any person, disclosure of this information would, in conjunction with information readily available from other sources, allow a number of individuals to be identified.

Specifically, Table 2 in the document is a list of VINs where the corresponding entries on the Register of Approved Vehicles (RAV) contain personal information about a number of individuals. Although the RAV is publicly accessible, to access this personal information requires a user to search for a specific VIN. I am satisfied that the release of these VINs would in effect disclose information that identifies multiple individuals by facilitating a user to access entries on the RAV where that information is available.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the release of information marked '47F' contained within the document would, in effect, constitute an unreasonable disclosure of the personal information of a number of individuals for the following reasons:

- the individuals are identifiable through the personal information contained in RAV entries associated with the conditionally exempt information,
- the conditionally exempt information is not well known and is not available from publicly accessible sources – there is no publicly accessible list of all VINs that are registered on the RAV,
- the persons to whom the personal information on the RAV relates are not known to be (or to have been) associated with the information contained within the document for release,
- the individuals identified in such RAV entries are also likely to have had their personal information added to the publicly-accessible register by another party, so would not expect their information to have been placed in the public domain,
- release of this information would cause stress to the individuals concerned,
- no further public purpose would be achieved through the disclosure of the personal information,
- the information is current and has not lost its sensitivity through the passage of time,
- detriment may be caused to the individuals to whom the personal information on the RAV relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

In particular, although the RAV is a publicly accessible database, entries are only accessible by searching for a specific VIN number. The ability to identify valid VIN numbers that are linked to an entry on the RAV is limited, and providing a list of VIN numbers where the corresponding entry on the RAV contains personal information would significantly facilitate any attempt to source such personal information.

For the reasons outlined above, I decided that releasing the part of the document marked 's47F' would result in an unreasonable disclosure of personal information, and it is there conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.



I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that disclosure could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy and that this factor weighs heavily against disclosure of the conditionally exempt information at this time.

The Department is committed to complying with its obligations under the Privacy Act 1988, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of exempt material

Section 22 of the FOI Act applies to documents containing exempt material and allows an agency to delete such material from a document.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the document being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT A**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

A large grey rectangular redaction box covers the signature area.

A/g Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 20 March 2024

**ATTACHMENT A.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-261

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 9 February 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

All correspondence the department holds in relation to Order for the Production of Documents No.458 from 6 February 2024 to 9 February 2024 inclusive.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified 12 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 4 documents
- grant partial access to 6 documents
- refuse access to 2 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 4.1 Section 34 - Cabinet documents

Section 34(1)(a) of the FOI Act provides that a document is an exempt document if both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted and
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet

Section 34(2) of the FOI Act provides that a document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which section 34(1) applies.

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.5 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 27-29 of the Cabinet Handbook state:

27. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.
28. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive Governments have relied on the convention that their views, either written or spoken will remain confidential well into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.
29. This convention provides the Executive of Government with the opportunity to contest policy ideas in a highly confidential manner in order to ensure that the collective decision that ultimately arises from the Cabinet's deliberations is the best possible policy decision for the administration of the Government.

I have had regard to the content of the parts of the documents marked 's34(3)' and am satisfied that they contain information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that the documents marked 's34' in the schedule are exempt under section 34 of the FOI Act.

## 4.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents marked 's47C' in the schedule, and parts of other documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the documents marked 's47C' in the schedule, and parts of other documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public

- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.



#### 4.4 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. A number of the emails consist of email chains which digress in different directions at later points. When your request was acknowledged, we advised you that duplicate material captured by your request would be considered irrelevant. As such, I consider that the duplicate material falls outside the scope of the request. I do note that for ease of reference, the headers of these emails have been included so you can cross-reference the one instance of that email that is included in the documents released to you.

In addition, the documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is also irrelevant to your request.

As such, an edited copy of the documents captured by your request has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

Finally, as I decided that some information you have requested is exempt from disclosure, I have also prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

#### 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them.

#### 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

#### 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Tristan Kathage  
Assistant Secretary  
Reducing Surface Transport Emissions Branch  
Surface Transport Emissions and Policy Division

Date: 18 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

All correspondence the department holds in relation to Order for the Production of Documents No.458 from 6 February 2024 to 9 February 2024 inclusive

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	7/02/2024	Letter to Senator the Hon. Murray Watt With attachment: Letter to Senator the Hon. Penny Wong	2	Access granted in full	
2.	7/02/2024	Email subject: Heads up – Order for the Production of Documents – fuel or vehicle emissions standards  Attachment: McKenzie – Amendment to GB 458 (publicly available: <a href="#">McKenzie - Amendment to GB 458 (aph.gov.au)</a> )	2	Partial access  s4 – document maintained for reference purposes and publicly available	s22 s47C
3.	7/02/2024	Email subject: PII and OPD letters	2	Partial access granted	s22 s47C
4.	undated	Draft Letter	2	Access refused	s47C
5.	Undated	Draft letter	2	Access refused	s47C
6.	7/02/2024	Email subject: OPD - NVES	5	Partial access granted	s22 s34 s47C
7.	8/02/2024	Email chain Attachment A - Information sheet	4 1	Access granted in full to relevant information	s22
8.	8/02/2024	Email subject: OPD - NVES	8	Partial access granted	s22 47C
9.	8/02/2024	Email subject: Advice – Re:OPD - NVES	7	Partial access granted	s22 s47C s34
10.	8/02/2024	Email subject: Heads up – Order for the Production of Documents – fuel or vehicle emissions standards	4	Access granted in full to relevant information	s22
11.	8/02/2024	Email subject: RE: Information on senate order for the production of documents no. 458 for senate estimates briefing	2	Access granted in full to relevant information	s22
12.	8/02/2024	Email subject: OPD - NVES	10	Partial access granted	s22 s34 s47C

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-247

s22(1)(a)(ii)

Dear s22(1)(a)

## Decision on your Freedom of Information Request

I refer to your request of 17 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

Hot topic and portfolio briefs for the October 2023 supplementary budget estimates for 2023-24.

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

As advised in the Department's correspondence of 17 January 2024, the Department has finalised two prior decisions on access capturing departmental Key Briefs prepared for both the Rural and Regional Affairs and Transport and the Environment and Communications supplementary budget estimates hearings in October 2023. The relevant documents have been published by the Department and can be accessed at:

- [www.infrastructure.gov.au/sites/default/files/documents/foi24-204-documents-released.pdf](http://www.infrastructure.gov.au/sites/default/files/documents/foi24-204-documents-released.pdf)
- [www.infrastructure.gov.au/sites/default/files/documents/foi-24-150-documents-released\\_dl.pdf](http://www.infrastructure.gov.au/sites/default/files/documents/foi-24-150-documents-released_dl.pdf)

As the Department has previously made decisions on access and published these documents, they have not been considered for the purpose of this decision on access in relation to your request.

I have identified an additional 6 documents relevant to your request. These documents were not captured in the previous requests referred to above, and were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 4 documents
- grant partial access to 2 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

#### **4 Finding of facts and reasons for decision**

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

##### **4.1 Section 47 - Documents disclosing commercially valuable information**

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
  - whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
  - whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
  - whether the information is still current or out of date (out of date information may no longer have any value), and
  - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value

- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine “arm’s length’ buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

For the reasons outlined above, I decided that the parts of the documents marked ‘s47’ are exempt from disclosure under section 47(1)(b) of the FOI Act.

## 4.2 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked ‘s47F’ includes personal information about an individual.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individual whose personal information is contained in the document is identifiable
- release of this information would cause stress to the individual concerned
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time



- the individual would not expect the information to be placed in the public domain, and detriment may be caused to the individual to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.3 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

[Electronically Signed]

Philip Smith  
First Assistant Secretary  
Office for the Arts

Date: 18 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS - FOI 24-247

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	20/09/2023	SB23-000702 - National Cultural Policy	20	Access granted to relevant information	s22
2.	20/09/2023	SB23-000703 - Budget Outcomes	18	Access granted to relevant information	s22
3.	5/09/2023	SB23-000704 - Digital Games Tax Offset	3	Access granted to relevant information	s22
4.	21/09/2023	SB23-000705 - Australian Content Standards – Performance	13	Partial access granted	s22 s47F
5.	21/09/2023	SB23-000706 - Australian Content on Streaming Services	18	Partial access granted	s22 s47
6.	22/09/2023	SB23-000707 - Allegations in the Indigenous Visual Arts Industry	4	Access granted to relevant information	s22

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-266

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 15 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

The submission sent to the minister on 30 November 2022 (document identification number MS22-002030) regarding the desktop review results for the Investing in Our Communities Program and the Priority Community Infrastructure Program, including the summary of respondents and the project scores at Attachment B.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified 1 document (the document) that is relevant to your request. The document was in the possession of the Department when your request was received.

I have decided to grant partial access to the document

A schedule setting out the document relevant to your request, with my decision in relation to the document, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of the document relevant to your request are set out below.

### 4.1 Section 47B - Documents affecting Commonwealth-State relations

Section 47B(b) of the FOI Act provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

Paragraph 6.31 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, [www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions - ftn28](http://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions-ftn28) but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that disclosure of parts of the document may adversely affect the administration of a continuing Commonwealth-State project, impair the future flow of information to or from the Commonwealth and substantially impair Commonwealth-State programs.

In relation to the test *would or could reasonably be expected*, paragraph 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that damage that would or could reasonably be expected to occur, based on reasonable grounds, is real, significant or a material possibility.

For the reasons outlined above, I decided that parts of the document marked 's47B' are conditionally exempt from disclosure under section 47B of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.2 Section 47E - Documents affecting certain operations of agencies**

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the Department's 'proper and efficient' operations, that is, the Department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that parts of the document marked 's47E(d)' contain information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on the Department's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the Department conducts those operational activities. These activities include the effective administration of an active grant program.

For the reasons outlined above, I decided that parts of the document marked 's47E' are conditionally exempt from disclosure under section 47E of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.3 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

## Business information

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Parts of the document marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

## Unreasonable adverse effect of disclosure

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on an organisation or undertaking in respect of its business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of an organisation or undertaking.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the ongoing viability of the affected third-party organisation or undertaking outweighs the public interest in the disclosure of this information.

For the reasons outlined above, I decided that parts of the document marked 's47G' are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests



- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- would adversely affect the administration of continuing Commonwealth-State projects
- would damage the continued level of trust or co-operation in existing inter-government working relationships
- would prejudice the attainment of outcomes of the relevant Programs for the communities to which they relate
- could reasonably be expected to have a substantial and an unreasonable effect on the proper and efficient administration of the programs managed by the Department
  - I consider that it would weigh heavily against the public interest for programs such as these, established for the improvement of communities, to be adversely impacted by the disclosure of information which would result in a chilling effect within these programs.
- could reasonably be expected to prejudice the ongoing viability of the affected third-party organisations or undertakings

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information

- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

#### **4.5 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The document contains personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the document being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the document captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the document captured by your request

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Assistant Secretary  
Major Projects and Governance Branch  
Regional Development and Local Government Division

Date: 15 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS - FOI 24-266

Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
09/02/2023	Ministerial Submission: MS22-002030	3	Partial access granted	s22 s47E(d)
	MS22-002030 – Attachment A	7	Access refused in full	s47G
	MS22-002030 – Attachment B	10	Partial access granted	s47E(d) s47G s47B
	MS22-002030 – Attachment C	7	Access granted in full	

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-245

s22(1)(a)(ii)

Dear s22(1)(a)

#### Decision on your Freedom of Information Request

I refer to your request of 16 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

##### 1 Your request

You requested access to:

All complaints about the ABC's coverage of the war in Gaza addressed to Minister for Communications Michelle Rowland and/or her subordinates, and/or the department

##### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

##### 3 Decision

I have identified 52 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to refuse access to 52 documents.

##### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

#### 4.1 Section 37 - documents affecting enforcement of law and protection of public safety

Section 37(2)(a) of the FOI Act provides that a document is an exempt document if its disclosure would, or could reasonably be expected to prejudice the fair trial of a person or the impartial adjudication of a particular case.

Paragraph 5.107 of the FOI Guidelines states that this exemption operates in specific circumstances; that it is necessary to identify which persons would be affected and that the term 'prejudice' implies some adverse effect from disclosure.

The documents contain information which, if disclosed, would, or could reasonably be expected to prejudice the impartial adjudication of a case currently before the Fair Work Commission.

In relation to the test *would or could reasonably be expected*, paragraphs 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that the disclosure of this information would result in a real, significant or material possibility of prejudice to the impartial adjudication of the Fair Work Commission matter referred to above.

For the reasons outlined above, I decided that the documents are exempt from disclosure under section 37 of the FOI Act.

#### 4.2 Section 47E - Documents affecting certain operations of agencies

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on an agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the documents contain information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on an agency's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the relevant agency conducts those operational activities.

For the reasons outlined above, I decided that the documents are conditionally exempt from disclosure under section 47E of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the documents include personal information about a number of individuals.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.



I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of '*FG*' and *National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the persons to whom the personal information relates are not known to be (or to have been) associated with the matters dealt with in the documents
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time

- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the documents are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice an agency's ability to conduct its proper and efficient operations in the future
- could reasonably be expected to harm the interests of an individual or group of individuals
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that disclosure of the conditionally exempt personal information would not provide you with any insight into the workings of government.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

If you are dissatisfied with my decision, you may apply for a review of it.

### 7.1 Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### 7.2 Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).

## 8 Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)

(ii)

Margaret Lopez  
Assistant Secretary  
Media Industry and Sustainability Branch  
Online Safety, Media and Platforms Division

Date: 15 March 2024



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-238

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 15 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

- a) copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the industrial action dispute between DP World and the Maritime Union of Australia (branch of the Construction, Forestry and Maritime Employees Union)
- b) correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the industrial action dispute between DP World and the Maritime Union of Australia (branch of the Construction, Forestry and Maritime Employees Union);
- c) copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding correspondence or proposed meetings, between the Minister and representatives of the MUA.

The relevant dates of this search are between 1 June 2022 and 12 January 2024.

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Background

A document for the purpose of the FOI Act, as defined under section 4(1), does not include material maintained for reference purposes that is otherwise publicly available.

As such, the Attachment referred to within document 2, as numbered in the below referred to schedule, has not been provided as it is available from publicly accessible sources.

For ease of reference, this document can be accessed via:

[www.wa.gov.au/system/files/2023-10/wa\\_shipping\\_and\\_supply\\_chain\\_taskforce\\_final\\_september\\_2023.pdf](http://www.wa.gov.au/system/files/2023-10/wa_shipping_and_supply_chain_taskforce_final_september_2023.pdf)

#### 4 Decision

I have identified 7 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 1 document
- grant partial access to 6 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

#### 5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

##### 5.1 Section 47B - Documents affecting Commonwealth-State relations

Section 47B(a) of the FOI Act provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

Paragraph 6.31 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information

- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, [www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions - ftn28](http://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions-ftn28) but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that disclosure of parts of the documents would, or could reasonably be expected to:

- interrupt or create difficulty in negotiations or discussions that are underway
- adversely affect the continued level of trust or co-operation in existing inter-office relationships
- impair or prejudice the flow of information to and from the Commonwealth

In relation to the test *would or could reasonably be expected*, paragraph 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that damage that would or could reasonably be expected to occur, based on reasonable grounds, is real, significant or a material possibility.

For the reasons outlined above, I decided that the parts of the documents marked 's47B' are conditionally exempt from disclosure under section 47B of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 5.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the

processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the *'deliberative process'* generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### **Deliberative matter**

Paragraph 6.63 of the FOI Guidelines states that *'deliberative matter'* is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The parts of the documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

### **Purely factual material**

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents is an integral part of the deliberative content.

For the reasons outlined above, I decided that the parts of the documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **5.3 Section 47F – Documents affecting personal privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### **Personal Information**

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.



Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' include personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984] AATA 437* at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 5.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests

- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- would damage the continued level of trust or co-operation in existing inter-government working relationships
- would prejudice or impair the future flow of information to and from the Commonwealth
- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy.
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5.5 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

### **6 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

### **7 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 8 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 9 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Megan Scott  
Assistant Secretary  
Maritime and Shipping Branch  
Surface Transport Emissions and Policy Division

Date: 8 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-238

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	07/12/2023	Ministerial Submission	8	Partial access granted	s22 s47B s47C s47F
2.	12/11/2023	Correspondence	3	Partial access granted	s22 s47C
3.	08/01/2024	Correspondence	5	Partial access granted	s22 s47F
4.	08/01/2024	Correspondence	3	Partial access granted	s22 s47F
5.	10/01/2024	Correspondence	4	Partial access granted	s22 s47C s47F
6.	12/01/2024	Correspondence	2	Access granted to relevant information	s22
7.	12/01/2024	Correspondence	3	Partial access granted	s22 s47F

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-202

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 11 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

A copy of the department's Question Time briefs that were provided to Office of the Minister for Communications in the period 9 October 2023 to 7 December 2023. For clarity, if briefs were updated during this period, please provide only the latest copy of the brief and not the earlier versions.

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified 32 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to grant partial access to these 32 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.



## 4.1 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The documents contain material which was not provided by the Department to the Office of the Minister for Communications. Where the documents contain material not provided by the Department, I have decided that this material can reasonably be regarded as irrelevant to your request.

The documents also contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request.

As I decided that some information contained in the documents released to you is irrelevant to your request, I have prepared an edited copy of the documents by deleting the irrelevant information under section 22(1)(a)(ii) of the FOI Act.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 4.2 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. This material can be characterised as advice provided to the Minister with respect to the pertinent facts and issues necessary to inform the Minister's decision making around public and parliamentary engagement.

### Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the document is an integral part of the deliberative content or is embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I decided that the parts of the documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure

- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would, to a limited degree, promote effective oversight of public expenditure
- would, to a very limited degree, allow you access to your personal information.

### **Factors weighing against disclosure**

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- would prejudice and impair the Department's relationship with its Minister, which by its very nature relies on the maintenance of confidentiality in the relationship to assure frankness, candour and completeness in the advice and commentary contained in Ministerial briefings. There is a special nature to this relationship and the role of the question time briefs and any prejudice or impairment to this process would weigh heavily against disclosure.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request

- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them.

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Samuel Grunhard  
First Assistant Secretary  
Communications Services and Consumer Division

Date: 06 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-202

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	16/10/2023	QB23-000897 CLASSIFICATION - Classification of Publications: Gender Queer	7	Partial access granted	s22 47C
2.	19/10/2023	QB23-000079 NBN - Board and Executive Bonuses	6	Partial access granted	s22 47C
3.	19/10/2023	QB23-000134 Improving Mobile Coverage Round – Target Locations	11	Partial access granted	s22 47C
4.	6/11/2023	QB23-000119 BROADCAST – Advertising to Children	10	Partial access granted	s22 47C
5.	6/11/2023	QB23-000120 SBS - Relocation	15	Partial access granted	s22 47C
6.	6/11/2023	QB23-000815 CLASSIFICATION - Classification Reform	7	Partial access granted	s22 47C
7.	6/11/2023	QB23-000900 Government Response to Hamas Material on Online Platforms	10	Partial access granted	s22 47C
8.	6/11/2023	QB23-000903 DIGITAL PLATFORMS - Misinformation on the Voice and Political Advertising	10	Partial access granted	s22 47C
9.	6/11/2023	QB23-000100 BROADCAST - Anti-siphoning	8	Partial access granted	s22 47C
10.	6/11/2023	QB23-000126 BROADCAST – Regional and Remote Issues	17	Partial access granted	s22 47C
11.	7/11/2023	QB23-000863 PLATFORMS and NEWS - Generative AI	10	Partial access granted	s22 47C
12.	13/11/2023	QB23-000868 BROADCAST - Media Standards	7	Partial access granted	s22 47C
13.	13/11/2023	QB23-000909 Communications FOIs	7	Partial access granted	s22 47C

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
14.	14/11/2023	QB23-000086 TELCO - TPG/Telstra Deal and TPG/Vocus	5	Partial access granted	s22 47C
15.	27/11/2023	QB23-000082 NBN - Free NBN services to 30,000 families	5	Partial access granted	s22 47C
16.	27/11/2023	QB23-000088 REGIONAL COMMS - Overarching	8	Partial access granted	s22 47C
17.	27/11/2023	QB23-000097 ABC & SBS - Overarching	8	Partial access granted	s22 47C
18.	27/11/2023	QB23-000094 USO reform	5	Partial access granted	s22 47C
19.	28/11/2023	QB23-000830 Consumer Telco Issues - (Retail Focus)	19	Partial access granted	s22 47C
20.	28/11/2023	QB23-000103 DIGITAL PLATFORMS - ACMA Misinformation Powers	33	Partial access granted	s22 47C
21.	28/11/2023	QB23-000911 ABC Journalists - Open Letter Israel-Hamas Conflict	11	Partial access granted	s22 47C
22.	29/11/2023	QB23-000829 GAMBLING - Overarching	17	Partial access granted	s22 47C
23.	30/11/2023	QB23-000089 TELCO - Scams - Unsolicited Communications	7	Partial access granted	s22 47C
24.	30/11/2023	QB23-000907 OPTUS Outage	13	Partial access granted	s22 47C
25.	4/12/2023	QB23-000081 NBN - SAU Variation - ACCC	12	Partial access granted	s22 47C
26.	4/12/2023	QB23-000132 NBN - Overarching	5	Partial access granted	s22 47C
27.	4/12/2023	QB23-000861 SUSTAINABLE TECHNOLOGY - Low Earth Orbit Satellites	5	Partial access granted	s22 47C
28.	4/12/2023	QB23-000106 ONLINE SAFETY - Age Verification	6	Partial access granted	s22 47C

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
29.	4/12/2023	QB23-000128 BROADCAST – Overarching Media Reforms	27	Partial access granted	s22 47C
30.	5/12/2023	QB23-000913 Communications Legislation Amendment (Prominence and Anti-Siphoning) Bill 2023	21	Partial access granted	s22 47C
31.	7/12/2023	QB23-000118 ONLINE SAFETY – Overarching	31	Partial access granted	s22 47C
32.	7/12/2023	QB23-000096 Australia Post - Overarching	20	Partial access granted	s22 47C

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).





**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-199

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## **Decision on your Freedom of Information Request**

I refer to your request of 6 December 2023 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### **1 Your request**

You requested access to:

Copies of any communications held by the Department, including letters, emails, text messages or other digital messaging service, between the members (the reviewers) of the Independent Strategic Review of the Infrastructure Investment Program and either the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and/or the Minister for Infrastructure, Transport, Regional Development and Local Government in relation to the Independent Strategic Review of the Infrastructure Investment Program.

The specified time period for search of documents under this request is between 1 August 2023 and 16 November 2023.

### **2 Authority to make decision**

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### **3 Decision**

I have identified 35 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 1 document
- grant partial access to 22 documents
- refuse access to 12 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

#### **4 Finding of facts and reasons for decision**

My findings of fact and reasons for deciding that exemptions apply to the documents, or parts thereof relevant to your request are set out below.

##### **4.1 Section 47 - Documents disclosing commercially valuable information**

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
  - whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
  - whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
  - whether the information is still current or out of date (out of date information may no longer have any value), and
  - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine “arm’s length’ buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

For the reasons outlined above, I decided that documents marked ‘s47’ in the schedule are exempt from disclosure under section 47(1)(b) of the FOI Act.

#### **4.2 Section 47B - Documents affecting Commonwealth-State relations**

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Paragraph 6.31 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator’s identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations

- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, [www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions - ftn28](http://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions-ftn28) but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that disclosure of parts of the documents would, or could reasonably be expected to:

- interrupt or create difficulty in negotiations or discussions that are underway
- adversely affect the administration of Commonwealth-State projects
- substantially impair Commonwealth-State programs
- adversely affect the continued level of trust or co-operation in existing inter-office relationships
- impair or prejudice the flow of information to and from the Commonwealth
- adversely affect the development of future Commonwealth-State projects

In relation to the test *would or could reasonably be expected*, paragraph 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that damage that would or could reasonably be expected to occur, based on reasonable grounds, is real, significant or a material possibility.

Paragraph 6.41 of the FOI Guidelines states that when assessing whether the information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication.

The circumstances of the communication may also need to be considered, such as:

- whether the communication was ad hoc, routine or required
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information
- how the information was subsequently handled, disclosed or otherwise published.

I am satisfied that the documents, or parts thereof, marked 's47B(b)' in the schedule contain information which was communicated in confidence, and that the communication was considered to be confidential at the time of the communication.

## Consultation with a State or Territory

In making my decision, I consulted with the relevant State government, and I took into account any concerns raised by the relevant State.

For the reasons outlined above, I decided that the documents, or parts thereof, marked 's47B' in the schedule are conditionally exempt from disclosure under section 47B of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

#### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the documents, or parts thereof, marked 's47C' in the schedule contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents, or parts thereof set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

## Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

- 6.73 'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.
- 6.74 Where a decision maker finds it difficult to separate the purely factual material from the deliberative matter, both the elements may be exempt. If the two elements can be separated, the decision maker should consider giving the applicant a copy with deletions under s 22 to provide access to the purely factual material.

I am satisfied that factual information contained within the documents, or parts thereof, is either an integral part of the deliberative content or is embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I decided that the documents, or parts thereof, marked 's47C' in the schedule are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the parts of the documents marked 's47F' includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act

- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- some individuals to whom the personal information relates are not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of the conditionally exempt personal information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.5 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.



## Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information

## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- would adversely affect the administration of Commonwealth-State projects
- would damage the continued level of trust or co-operation in existing inter-government working relationships
- would prejudice the attainment of outcomes of joint Commonwealth/State programs
- would prejudice or impair the future flow of information from State and Territory governments to the Commonwealth
- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.6 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22(1)(a)(ii) of the FOI Act.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Toby Robinson  
Assistant Secretary  
Infrastructure Investment Reform Branch  
Land Transport Infrastructure Division

Date: 1 March 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-199

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	1/08/2023	Email correspondence	3	Partial access granted	s22 s47B(a) s47B(b) s47C s47F
2.	1/08/2023	Email correspondence and attachment	11	Partial access granted	s47B(a) s47C
3.	2/08/2023	Email correspondence	3	Access refused in full	s47B(a) s47B(b) s47C s47F
4.	2/08/2023	Email correspondence	2	Access refused in full	s47B(a) s47B(b) s47C s47F
5.	4/08/2023	Email correspondence and attachments	60	Partial access granted	s22 s47B(a) s47B(b) s47C
6.	4/08/2023	Email correspondence and attachments	110	Access refused in full	s47(1)(b) s47B(a) s47C s47F
7.	4/08/2023	Email correspondence	2	Access refused in full	s47(1)(b) s47B(a) s47C s47F
8.	4/08/2023	Email correspondence	3	Access refused in full	s47(1)(b) s47B(a) s47C s47F
9.	4/08/2023	Email correspondence	4	Access refused in full	s47(1)(b) s47B(a) s47C s47F
10.	6/08/2023	Email correspondence	2	Partial access granted	s47F
11.	7/08/2023	Email correspondence	2	Access refused in full	s47B(a) s47C
12.	8/08/2023	Email correspondence and attachment	3	Partial access granted	s22 s47B(a) s47C
13.	8/08/2023	Email correspondence	1	Partial access granted	s22 s47F

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
14.	8/08/2023	Email correspondence	3	Access refused in full	s47B(a) s47C
15.	8/08/2023	Email correspondence and attachments	9	Partial access granted	s22 s47B(a) s47B(b) s47C s47F
16.	9/08/2023	Email correspondence	2	Access refused in full	s47B(a) s47C
17.	9/08/2023	Email correspondence	3	Access refused in full	s47B(a) s47C s47F
18.	9/08/2023	Email correspondence and attachments	74	Partial access granted	s22 s47B(a) s47B(b) s47C
19.	9/08/2023	Email correspondence	3	Partial access granted	s22 s47C s47F
20.	10/08/2023	Email correspondence	1	Partial access granted	s47B(a) s47C
21.	10/08/2023	Email correspondence and attachments	98	Partial access granted	s22 s47B(a) s47B(b) s47C
22.	10/08/2023	Email correspondence and attachments	76	Partial access granted	s22 s47B(a) s47B(b) s47C s47F
23.	10/08/2023	Email correspondence	1	Partial access granted	s22 s47F
24.	11/08/2023	Email correspondence	2	Access refused in full	s47C s47F
25.	11/08/2023	Email correspondence	2	Access refused in full	s47B(a) s47C s47F
26.	11/08/2023	Email correspondence and attachments	83	Partial access granted	s22 s47C s47B(a) s47B(b)
27.	12/08/2023	Email correspondence	2	Partial access granted	s22 s47B(a) s47F
28.	12/08/2023	Email correspondence and attachments	272	Partial access granted	s22 s47B(a) s47B(b) s47C s47F

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
29.	12/08/2023	Email correspondence	2	Partial access granted	s22 s47F
30.	12/08/2023	Email correspondence	2	Partial access granted	s22 s47F
31.	12/08/2023	Email correspondence	3	Partial access granted	s22 s47F
32.	12/08/2023	Email correspondence and attachments	270	Partial access granted	s22 s47B(a) s47B(b) s47C
33.	14/08/2023	Email correspondence	2	Partial access granted	s22 s47F
34.	14/08/2023	Email correspondence	1	Access granted to relevant information	s22
35.	15/08/2023	Email correspondence	2	Partial access granted	s22 s47F

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-209

s22(1)(a)(ii)

Dear s22(1)(a)  
(ii)

### Decision on your Freedom of Information Request

I refer to your request of 13 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Correspondence from and notes of meetings with media companies, including Nine Entertainment, Seven Network, Ten, News Corp, SBS, ACM, Southern Cross Austereo, Foxtel and industry associations including Free TV, ASTRA and the Australian Association of National Advertisers, which refer to the House of Representatives Standing Committee on Social Policy and Legal Affairs' report, "You Win some You lose More", which was tabled on 28 June 2023.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified 49 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant partial access to 18 documents
- refuse access to 31 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.



## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the documents relevant to your request are set out below.

### 4.1 Section 45 - Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment

I am satisfied that the documents marked 's45' in the schedule consist of information:

- that is specifically identified within the documents as being confidential in nature
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain
- that was communicated and received on the basis of mutual understanding of confidence, and that this mutual understanding exists at the time of the communication
- in circumstances in which disclosure of the information will be without the authority of the affected third party, and
- in circumstances where disclosure of the information would cause detriment to the party who provided the confidential information to the Department. The detriment in this instance would involve financial loss to the affected third party.

For the reasons outlined above, I decided that the documents marked 's45' in the schedule are exempt from disclosure under section 45 of the FOI Act.

### 4.2 Section 47 - Documents disclosing commercially valuable information

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine "arm's length" buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

As notified to you on 29 January 2024, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I decided that the documents marked 's47' in the schedule are exempt from disclosure under section 47(1)(b) of the FOI Act.

### 4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

## Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the parts of the documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the documents marked 's47F' in the schedule includes personal information about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of '*FG*' and *National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person

- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of the personal information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the personal information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.5 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests

- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information

- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.6 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request.

The documents contain personal identifiers of public servants. When you submitted your request you indicated that you were not seeking the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the SES or equivalent.. On that basis, I decided this information is irrelevant to your request and an edited copy of the documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)



Margaret Lopez  
Assistant Secretary  
Media Industry and Sustainability Branch  
Online Safety, Media and Platforms Division

Date: 21 February 2024



## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	13/07/2023	Email from SBS to Department	3	Partial access granted	s22 s47F
2.	14/07/2023	Email from Network 10 to Department	3	Access refused in full	s22 s47F
3.	18/07/2023	Email from Nine Entertainment to Department	4	Access refused in full	s22 s47F
4.	19/07/2023	Email from Seven West Media to Department	3	Access refused in full	s47
5.	20/07/2023	Email from Nine Entertainment to Department	4	Access refused in full	s22 s47F
6.	21/07/2023	Email from Nine Entertainment to Department Attachment A	4 7	Access refused in full	s47 s45
7.	25/07/2023	Email from SBS to Department	8	Partial access granted	s22 s47F s47 s47C
8.	27/07/2023	Email from Network 10 to Department Attachment A	3 4	Access refused in full	s47 s45
9.	31/07/2023	Email from Foxtel to Department	3	Partial access granted	s22 s47F
10.	2/08/2023	Email from CRA to Department Attachment A Attachment B	4 7 1	Access refused in full	s47
11.	4/08/2023	Email from Foxtel to Department	6	Partial access granted	s22 s47F
12.	8/08/2023	Email from Foxtel to Department  Attachment A	6  5	Partial access granted  Access refused in full	s22 s47 s47F s47
13.	5/10/2023	Email from ANRA to Department	4	Partial access granted	s22 s47F
14.	5/10/2023	Email from Foxtel to Department	3	Partial access granted	s22 s47F s47C
15.	5/10/2023	Email from SBS to Department	3	Partial access granted	s22 s47F
16.	6/10/2023	Email from ANRA to Department	4	Partial access granted	s22 s47F
17.	9/10/2023	Email from Seven West Media to Department	2	Access refused in full	s47
18.	11/10/2023	Email from CRA to Department	2	Access refused in full	s47
19.	13/10/2023	Email from Network 10 to Department	3	Access refused in full	s22 s47F

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
20.	19/10/2023	Email from Seven West Media to Department	2	Access refused in full	s47
21.	25/10/2023	Email from CRA to Department	4	Access refused in full	s47
22.	26/10/2023	Email from ANRA to Department	4	Partial access granted	s22 s47F
23.	26/10/2023	Email from Free TV to Department	4	Access refused in full	s22 s47F
24.	26/10/2023	Email from SEN to Department Attachment A	5 4	Access refused in full	s47
25.	27/10/2023	Email from Nine Entertainment to Department Attachment A	7 16	Access refused in full	s47 s45
26.	27/10/2023	Email from Free TV to Department Attachment A Attachment B Attachment C	3 2 12 4	Access refused in full	s47 s45
27.	27/10/2023	Email from IAB to Department	5	Partial access granted	s22 s47F
28.	27/10/2023	Email from Network 10 to Department Attachment A	4 5	Access refused in full	s47 s45
29.	27/10/2023	Email from Seven West Media to Department Attachment A	4 8	Access refused in full	s47
30.	30/10/2023	Email from IAB to Department Attachment A	4 7	Partial access granted Access refused	s22 s47F s47
31.	6/11/2023	Email from SBS to Department	5	Partial access granted	s22 s47F s47 s47C
32.	6/11/2023	Email from SBS to Department	7	Partial access granted	s22 s47F s47 s47C
33.	10/11/2023	Meeting between SBS and Departmental officials	1	Partial access granted	s22 s47F
34.	16/11/2023	Email from Network 10 to Department	5	Access refused in full	s22 s47 s45
35.	23/11/2023	Email from Free TV to Department	5	Access refused in full	s22 s47F
36.	27/11/2023	Email from Free TV to Department	5	Access refused in full	s22 s47F
37.	30/11/2023	Email from Seven West Media to Department	2	Access refused in full	s47
38.	1/12/2023	Email from Nine Entertainment to Department	8	Access refused in full	s47 s45

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
39.	1/12/2023	Email from Seven West Media to Department	2	Access refused in full	s47
40.	7/12/2023	Email from CRA to Department	2	Access refused in full	s47
41.	7/12/2023	Email from Network 10 to Department	11	Access refused in full	s22 s47 s45
42.	7/12/2023	Email from Network 10 to Department	8	Access refused in full	s22 s47 s45
43.	15/12/2023	Email from Foxtel to Department	3	Partial access granted	s22 s47F
44.	15/12/2023	Email from Network 10 to Department	3	Access refused in full	s22 s47F
45.	15/12/2023	Email from CRA to Department	3	Access refused in full	s47
46.	19/12/2023	Email from Seven West Media to Department	3	Access refused in full	s47
47.	20/12/2023	Email from Free TV to Department	3	Access refused in full	s22 s47F
48.	20/12/2023	Email from SBS to Department	4	Partial access granted	s22 s47F
49.	22/12/2023	Email from Foxtel to Department	3	Partial access granted	s22 s47F



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-208

s22(1)(a)(ii)

Dear s22(1)(a)  
(ii)

### Decision on your Freedom of Information Request

I refer to your request of 13 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

1. Correspondence from and notes of meetings with fast food companies, consumer food companies, soft drink manufacturers, and their umbrella groups including Australian Food and Grocery Council, and the Australian Beverages Council, which refer to potential restrictions on advertising or food and beverage products to children and/or the Broadcasting Services Amendment (Health Kids Advertising) Bill 2023.
2. Correspondence from and notes of meeting with media companies, including Nine Entertainment, Seven Network, Ten, New Corp, SBS, ACM, Southern Cross Austereo, and industry associations including Free TV and the Australian Association of National Advertisers, which refer to proposed restrictions on food advertising to children, and/or the Broadcasting Services Amendment (Health Kids Advertising) Bill 2023
3. Correspondence from and notes of meetings with social media and digital streaming platforms including Google, Meta and Tik Tok and YouTube, which refer to proposed restrictions on food advertising to children, and/or the Broadcasting Services Amendment (Health Kids Advertising) Bill 2023
4. Analysis or advice provided by the Department to the Minister for Communications on the practicality of an online ban on junk food advertising, and/or the Broadcasting Services Amendment (Health Kids Advertising) Bill 2023

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Background

I have determined that some of the information you have requested is publicly available. Under section 4 of the FOI Act, the definition of a 'document' which may be subject to a request under the Act does not include, *material maintained for reference purposes that is otherwise publicly available*.

Document 5, Attachment A listed in the schedule of documents can be found at the link provided at **ATTACHMENT A**. As such, I consider that this document falls outside the scope of the FOI Act, and I have not considered it in my decision.

### 4 Decision

I have identified 5 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to 2 documents
- grant partial access to 3 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

#### 5.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of '*FG*' and *National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 5.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

## Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

## Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.



## Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 5.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 6 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 7 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 8 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 9 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

James Penprase  
Assistant Secretary  
Media Reform Branch  
Online, Safety, Media and Platforms Division

Date: 29 February 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	19/01/2023	Question Time Brief QB23-000119 BROADCAST – Advertising to Children	10	Partial access granted <i>to relevant information</i>	s22 s47F
2.	30/05/2023	Ministerial correspondence reference MC23-062869	1	Partial access granted	s47F
3.	29/06/2022	Question Time Brief QB22-000273 BROADCAST - Advertising to Children	14	Access granted in full to relevant information	s22
4.	19/08/2022	Question Time Brief QB22-000379 001 Bans on Junk Food Advertising during Children-s viewing times	3	Access granted in full	
5.	17/08/2023	Email subject – Sydney Morning Herald enquiry AANA media code changes	2	Partial access granted	s22 s47F
	17/08/2023	- Attachment A - ANAA Media Release	1	This document is publicly available here: <a href="#">AANA strengthens Children’s Advertising Code – AANA</a>	S4

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-206

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 11 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

Between 19/03/22 to 30/11/23, a copy of all briefings, advice, memos and/or any written correspondence between the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the South Australian Government regarding the Tarrkarri Centre for First Nations Cultures proposed to be built at Lot Fourteen in Adelaide.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

#### 3 Decision

I have identified 43 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 31 documents
- grant partial access to 12 documents

A schedule setting out the documents relevant to your request, with my decision in relation to these documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

### 4.1 Section 47B - Documents affecting Commonwealth-State relations

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, [www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions - ftn28](http://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions-ftn28) but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that disclosure of the parts of the documents marked 's47B' are reasonably expected to cause damage to relations between the Commonwealth and the South Australian government. Specifically, disclosure of the material is reasonably expected to:

- interrupt or create difficulty in negotiations or discussions that are underway regarding relevant Commonwealth-State projects
- adversely affect the administration of continuing relevant Commonwealth-State projects
- substantially impair, but not merely modify, the relevant Commonwealth-State programs
- adversely affect the continued level of trust or co-operation in existing inter-office relationships between the Commonwealth and South Australian government.
- impair or prejudice the flow of information to and from the Commonwealth regarding similar future projects.

In relation to the test *would or could reasonably be expected*, paragraph 5.16-5.18 of the FOI Guidelines state:

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.
- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that damage that would or could reasonably be expected to occur, based on reasonable grounds, is real, significant or a material possibility.

### **Consultation with a State or Territory**

In making my decision, I consulted with the relevant State government, and I took into account any concerns raised by the relevant State and/or Territory.

For the reasons outlined above, I decided that the parts of the documents marked 's47B' are conditionally exempt from disclosure under section 47B of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## **4.2 Section 47C – Deliberative processes**

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

### **Deliberative process**

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that *'deliberative matter'* is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The parts of the documents provide opinions and advice forming part of the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the parts of the documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the document marked 's47F' includes personal information about an individual.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.



Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individual whose personal information is contained in the document is identifiable
- no further public purpose would be achieved through the release of the personal information
- the information is current and has not lost its sensitivity through the passage of time
- the individual would not expect the information to be placed in the public domain, and detriment may be caused to the individual to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the parts of the document marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.4 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### **Factors weighing against disclosure**

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- would adversely affect the administration of a continuing Commonwealth-State project
- would damage the continued level of trust or co-operation in existing inter-government working relationships
- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of an individual's right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest.

I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

#### 4.5 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

#### 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from State governments consulted about documents which contain information concerning the execution of their powers or functions

#### 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

#### 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Fiona Yule  
Assistant Secretary  
City and Regional Partnerships Branch  
Partnerships and Projects Division

Date: 28 February 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-206

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	21/03/2022	Correspondence - Tarrkarri Comms Work Group - Monthly meeting reschedule	1	Access granted to relevant information	s22
2.	21/03/2022	Correspondence - Adelaide City Deal Media	7	Access granted to relevant information	s22
3.	28/03/2022	Correspondence - Lot Fourteen Milestones	28	Access granted to relevant information	s22
4.	6/04/2022	Correspondence - Tarrkarri Media Release	3	Access granted to relevant information	s22
5.	7/04/2022	Correspondence - Calendar cancellation of Lot Fourteen Executive Steering Committee 2022	1	Access granted to relevant information	s22
6.	19/04/2022	Correspondence - Tarrkarri Comms Work Group - Monthly meeting reschedule	1	Access granted to relevant information	s22
7.	21/04/2022	Correspondence - Tarrkarri Comms Work Group - April Meeting - Attachments	18	Partial access granted	s22 s47B
8.	6/05/2022	Correspondence - Tarrkarri Media Release	4	Access granted to relevant information	s22
9.	6/05/2022	Correspondence - Tarrkarri Signage	9	Partial access granted	s22 s47B
10.	6/05/2022	Correspondence - Tarrkarri Comms Work Group - Out of session actions	16	Partial access granted	s22 s47B
11.	11/05/2022	Correspondence - Agenda Items - Tarrkarri Communications Working Group	1	Access granted to relevant information	s22
12.	17/05/2022	Correspondence - Request to acquit milestone for Tarrkarri	8	Access granted to relevant information	s22
13.	31/05/2022	Correspondence - Contacts for Tarrkarri Project Plan	87	Partial access granted	s22 s47B
14.	21/06/2022	Correspondence - Tarrkarri Signage	8	Access granted to relevant information	s22
15.	5/07/2022	Correspondence - Business and Operating Model and Governance Plan	63	Partial access granted	s22 s47B
16.	5/07/2022	Correspondence - Business and Operating Model and Governance Plan	64	Partial access granted	s22 s47B
17.	5/08/2022	Correspondence - Commonwealth visit to Lot Fourteen	5	Access granted to relevant information	s22
18.	22/08/2022	Correspondence - AACC Tarrkarri meetings	1	Access granted to relevant information	s22

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
19.	1/09/2022	Correspondence - Tarrkarri Incoming Correspondence for Project	6	Partial access granted	s22 s47C s47F
20.	31/10/2022	Correspondence - SA Government review of Tarrkarri Media	5	Access granted to relevant information	s22
21.	24/11/2022	Correspondence - Terms of Reference - Tarrkarri Art Centre	4	Access granted to relevant information	s22
22.	11/01/2023	Correspondence - Adelaide City Deal - 2012-24 Budget Movement of Funds Process	16	Access granted to relevant information	s22
23.	13/01/2023	Correspondence - Adelaide City Deal - 2012-24 Budget Movement of Funds Process	7	Access granted to relevant information	s22
24.	13/01/2023	Correspondence - Adelaide City Deal - 2012-24 Budget Movement of Funds Process	4	Access granted to relevant information	s22
25.	19/01/2023	Correspondence - Non-Lot Fourteen changes to Federal Funding Agreement	15	Access granted to relevant information	s22
26.	15/03/2023	Correspondence - City Deal quarterly reporting - Lot Fourteen updates	27	Access granted to relevant information	s22
27.	3/05/2023	Correspondence - City Deal quarterly reporting - Lot Fourteen updates	47	Access granted to relevant information	s22
28.	11/05/2023	Correspondence - Tarrkarri Media enquiry	5	Partial access granted	s22 s47C
29.	12/05/2023	Correspondence - Tarrkarri Media enquiry	5	Access granted to relevant information	s22
30.	15/05/2023	Correspondence - Visit to Adelaide and Implementation Board Agenda	4	Access granted to relevant information	s22
31.	13/06/2023	Correspondence - Signed Adelaide Federal Funding Agreement	13	Access granted to relevant information	s22
32.	13/06/2023	Correspondence - Commonwealth Visit to Adelaide - Agenda	11	Access granted to relevant information	s22
33.	15/06/2023	Correspondence - Governance Structure for Tarrkarri	4	Partial access granted	s22 s47C
34.	27/06/2023	Correspondence - Adelaide City Deal - Visit to Lot Fourteen - Wednesday 5 July 2023	3	Access granted to relevant information	s22
35.	30/06/2023	Correspondence - Adelaide City Deal - Quarterly Reports - June 2023	30	Access granted to relevant information	s22
36.	30/06/2023	Correspondence - Tarrkarri Milestone Peg-Out - May 2023	5	Access granted to relevant information	s22
37.	6/07/2023	Correspondence - Tarrkarri post SA Budget Media	2	Access granted to relevant information	s22
38.	11/07/2023	Correspondence - Tarrkarri Media enquiry	6	Partial access granted	s22 s47B s47C

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
39.	12/07/2023	Correspondence - Adelaide City Deal - Movement of Funds and Milestone Completion Certificate	8	Access granted to relevant information	s22
40.	7/08/2023	Correspondence - Tarrkarri Milestone Peg-Out - May 2023	13	Access granted to relevant information	s22
41.	8/08/2023	Correspondence - Adelaide City Deal Milestone payments - Details of next Treasury Payment Run	4	Access granted to relevant information	s22
42.	13/09/2023	Correspondence - Quarterly Reports - Tranche one	21	Partial access granted	s22 s47B
43.	15/09/2023	Correspondence - City Deal Quarterly Reports - September	10	Partial access granted	s22 s47B

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts



**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-203

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 11 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

“A list of all Ministerial Submissions sent to the office of the Minister for Communications, including the subject title, PDR number, and the date the briefs were sent to the Minister’s office. The request for this list covers the period from 1 June 2022 to the date of receipt of this request”

##### 1.1 Clarification/Modification of scope of request

On 15 January 2024, following consultation with you, you agreed to modify the scope of your request to limit it to ministerial submission provided to the Minister for Communications only.

On 19 January 2024, the Department issued you with a Practical Refusal Notice advising that the work involved in processing your request in its original form would substantially and unreasonably divert the resources of the department from its other operations due to its size and broad scope. Following a request consultation process with you, on 5 February 2024 you agreed to modify the scope of your requests to the following:

“A list of all Ministerial Submissions sent to the office of the Minister for Communications, including the subject title, PDR number, and the date the briefs were sent to the Minister’s office. The request for this list covers the period from 1 June 2023 to the date of receipt of this request”

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

You have requested access to data that is held in computer systems ordinarily available to the Department. Pursuant to section 17 of the FOI Act, the Department has used its computer systems to produce 1 written discrete document that contains the information you are seeking to access.

I have decided to grant partial access to that document.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of document relevant to your request are set out below.

#### 4.1 Section 33 – Documents affecting national security

Section 33(a)(i) of the FOI Act provides that a document is exempt from disclosure if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

##### *Security*

Section 4(5) of the FOI Act provides that the expression *security of the Commonwealth*, shall be taken to extend to matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth.

Relevantly section 4 of the *Australian Security Intelligence Organisation Act 1979* defines security as:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
  - (i) espionage;
  - (ii) sabotage;
  - (iii) politically motivated violence;
  - (iv) promotion of communal violence;
  - (v) attacks on Australia's defence system; or
  - (vi) acts of foreign interference;

whether directed from, or committed within, Australia or not; and

- (aa) the protection of Australia's territorial and border integrity from serious threats; and
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).

Paragraph 5.29 of the FOI Guidelines states that the term 'security of the Commonwealth' is intended to refer to the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests.

## Damage

Paragraphs 5.16, 5.17, 5.27 and 5.28 of the FOI Guidelines relevantly provide the following information about the terms 'could reasonably be expected to' and 'damage':

- 5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
- 5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, be presently occurring, or could occur in the future.
- 5.27 [For] the term 'reasonably expected'... there must be 'real' and 'substantial' grounds for expecting the damage to occur which can be supported by evidence or reasoning.
- 5.28 'Damage' for the purposes of this exemption is not confined to loss of damage in monetary terms. The relevant damage may be intangible... but [should be] determined on the facts of each particular case.

Paragraph 5.25 of the FOI Guidelines states that the context of each document is relevant because, while disclosure of the information in the document may not itself cause harm, in combination with other information, it may contribute to a complete picture which results in damage as specified in section 33(a) of the FOI Act.

Paragraph 5.31 of the FOI Guidelines state that the meaning of *damage* in the context of section 33(a)(i) of the FOI Act has three aspects:

- that of safety, protection or defence from something that is regarded as a danger
- the means that may be employed either to bring about or to protect against that danger, and
- the organisations or personnel providing safety or protection from the danger.

An assessment of whether information is exempt under section 33(a)(i) of the FOI Act requires consideration of the context and environment that exists at the time the decision is made, and paragraph 5.33 of the FOI Guidelines provides that where there is doubt about the application of section 33, decision makers should favour non-disclosure of the relevant information.

For the reasons set out above, I decided that part of the document marked 's33' is exempt from disclosure under section 33(a)(i) of the FOI Act.

## 4.2 Section 34 - Cabinet documents

Section 34(1)(a) of the FOI Act provides that a document is an exempt document if both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted and
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet

Section 34(2) of the FOI Act provides that a document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which section 34(1) applies.

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.5 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 27-29 of the Cabinet Handbook state:

27. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.
28. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive Governments have relied on the convention that their views, either written or spoken will remain confidential well into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.
29. This convention provides the Executive of Government with the opportunity to contest policy ideas in a highly confidential manner in order to ensure that the collective decision that ultimately arises from the Cabinet's deliberations is the best possible policy decision for the administration of the Government.

I have had regard to the circumstances in which the parts of the document marked 's34(1)' in the schedule was brought into existence, and I am satisfied that it was created for the dominant purpose of submission for consideration by the Cabinet, and that it has been submitted to the Cabinet for its consideration.

I have had regard to the content of the parts of the documents marked 's34(3)' and am satisfied that they contain information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that parts of the document marked 's34' are exempt under section 34 of the FOI Act.

### **4.3 Section 45 - Documents containing material obtained in confidence**

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority

- unauthorised disclosure of the information has or will cause detriment

I am satisfied that the parts of the documents marked 's45' consist of information:

- that is specifically identified as being confidential in nature
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain
- which has been communicated and received on the basis of a mutual understanding of confidence
- the disclosure of which would be without the authority of an affected third party, and
- the disclosure of which would cause detriment to the affected third party, including financial loss.

For the reasons outlined above, I decided that parts of the document marked 's45' are exempt from disclosure under section 45 of the FOI Act.

#### 4.4 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

##### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

##### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the parts of the document marked 's47C' contain material that meets the criteria of deliberative matter.

For the reasons outlined above, I decided that parts of the document marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.5 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

##### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the parts of the document marked 's47F' includes personal information about a number of individuals.

##### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that the parts of the document marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.



Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.6 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

##### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term ‘business or professional affairs’ distinguishes an individual’s personal or private affairs and an organisation’s internal affairs. The term ‘business affairs’ has been interpreted to mean ‘the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs’.

The parts of the document marked ‘s47G’ contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

##### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of ‘unreasonably’ in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

For the reasons outlined above, I decided that the parts of the document marked ‘s47G’ are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.7 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.

- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the information captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT A**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Sam Grunhard  
First Assistant Secretary  
Communications Services and Consumer Division

Date: 29 February 2024

**ATTACHMENT A.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-204

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 11 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

A copy of the Department of Infrastructure, Transport, Regional Development and Communications Senate Estimates briefs pack for the October 2023 hearings. Specifically, I seek only the briefs that related to the Communications portfolio. These would include briefs prepared for the department, plus the departmental briefs provided for the hearings involving the portfolio agencies (ACMA, eSafety Commissioner, Classification Board and Review Board), and departmental briefs for the hearings on Australia Post, NBN, ABC and SBS.

On 14 December 2023, following consultation with you, you agreed to modify the scope of your request to the following:

A copy of the Department of Infrastructure, Transport, Regional Development and Communications Senate Estimates Key briefs pack for the October 2023 hearings. Specifically, I seek only the Key briefs that related to the Communications portfolio. These would include Key briefs prepared by the department, including any key briefs prepared by the department for the hearings involving the portfolio agencies (ACMA, eSafety Commissioner, Classification Board and Review Board), and any key briefs prepared by the department for the hearings on Australia Post, NBN, ABC and SBS.

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified 49 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

- grant access in full to relevant information in 37 documents
- grant partial access to 12 documents

A schedule setting out the documents relevant to your request, with my decision in relation to these documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the parts of documents relevant to your request are set out below.

#### 4.1 Section 45 - Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment

I am satisfied that the parts of the documents marked 's45' consist of information:

- that has specifically identified to the Department as being confidential in nature
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain
- that was communicated and received on the basis of mutual understanding of confidence, and that this mutual understanding exists at the time of the communication
- in circumstances in which disclosure of the information will be without the authority of the affected third party, and
- in circumstances where disclosure of the information would cause detriment to the party who provided the confidential information to the Department. The detriment in this instance would involve financial loss to the affected third party.

For the reasons outlined above, I decided that parts of the documents marked 's45' are exempt from disclosure under section 45 of the FOI Act.

## 4.2 Section 47 - Documents disclosing commercially valuable information

Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
  - whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
  - whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
  - whether the information is still current or out of date (out of date information may no longer have any value), and
  - whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

I am satisfied that the relevant information contained in the documents:

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value
- confers a competitive advantage on the affected third party, and provides the affected third party with access to markets not available to its competitors
- is something that a genuine "arm's length" buyer would be prepared to pay to obtain
- is still current, and retains its intrinsic value to the affected third party
- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

This information consists of material purchased by the Department from a service provider, and which is only available on subscription from the service provider.



For the reasons outlined above, I decided that the parts of the documents marked 's47' are exempt from disclosure under section 47(1)(b) of the FOI Act.

### 4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

#### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that parts of the documents marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The information can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that parts of the documents marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.4 Section 47E - Documents affecting certain operations of agencies

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the Department's 'proper and efficient' operations, that is, the Department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the parts of the documents marked 's47E(d)' contain information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on the Department's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the Department conducts those operational activities.

For the reasons outlined above, I decided that parts of the documents marked 's47E' are conditionally exempt from disclosure under section 47E of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.5 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

##### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time; and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.6 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

##### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that ‘profession’ is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

Parts of the documents marked ‘s47G’ contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of ‘unreasonably’ in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

Section 47G(2) of the FOI Act provides that section 47G(1) does not apply to trade secrets or other information to which section 47 applies. Section 47G has not been applied to any information which I have previously decided is exempt under section 47 of the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked ‘s47G’ are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### **4.7 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and

- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would promote effective oversight of public expenditure to some degree
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the competitive commercial activities of an agency
- could reasonably be expected to harm the interests of an individual or group of individuals
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.
- could reasonably be expected to prejudice the profitability and financial viability of an organisation or undertaking

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **4.8 Section 22 – deletion of irrelevant and/or exempt material**

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Samuel Grunhard  
First Assistant Secretary  
Communications Services and Consumer Division

Date: 23 February 2024



## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-204

Doc No.	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	SB23-000734 - ABC and SBS Funding	2	Access granted to relevant information	s22
2.	SB23-000735 - ABC and SBS Board Appointments	10	Access granted to relevant information	s22
3.	SB23-000736 - SBS Relocation Feasibility Study	6	Partial access granted	s22 s47C
4.	SB23-000737 - Review of options to support the independence of the national broadcasters	2	Access granted to relevant information	s22
5.	SB23-000738 - Indo-Pacific Broadcasting Strategy	4	Access granted to relevant information	s22
6.	SB23-000739 - Online Gambling	6	Partial access granted	s22 s47C
7.	SB23-000740 - HoR Inquiry into Online Gambling	12	Access granted to relevant information	s22
8.	SB23-000741 - Broadcasting Resilience Program	24	Access granted to relevant information	s22
9.	SB23-000742 - Community Broadcasting	3	Access granted to relevant information	s22
10.	SB23-000743 - Disinformation and Misinformation – Draft Bill and Consultation	24	Partial access granted	s22 s47F
11.	SB23-000744 - News Media Assistance Program	4	Access granted to relevant information	s22
12.	SB23-000745 - Bargaining Code	8	Partial access granted	s22 s47C
13.	SB23-000746 - Digital Regulation / ACCC Digital Platforms Services Inquiry	4	Access granted to relevant information	s22
14.	SB23-000747 - Online Dating Safety	14	Access granted to relevant information	s22
15.	SB23-000748 - Online Safety	6	Access granted to relevant information	s22
16.	SB23-000749 - AMF Grant Election Commitment	7	Access granted to relevant information	s22
17.	SB23-000848 - Online Safety: Age Verification		Access granted to relevant information	s22
18.	SB23-000750 - Media Reform	7	Access granted to relevant information	s22
19.	SB23-000751 - Anti-siphoning	25	Partial access granted	s22 s45
20.	SB23-000752 - Prominence	4	Access granted to relevant information	s22
21.	SB23-000753 - Future of Television	7	Partial access granted	s22 s47F
22.	SB23-000754 - Classification Reform	9	Access granted to relevant information	s22

Doc No.	Description of document	Num of Pages	Decision on access	Provision of FOI Act
23.	SB23-000755 - Updates to Games Guidelines	7	Access granted to relevant information	s22
24.	SB23-000756 - NBN Funding Arrangements	3	Partial access granted	47E(d)
25.	SB23-000757 - NBN Upgrades – Fixed Line	11	Access granted to relevant information	s22
26.	SB23-000758 - NBN SAU Variation	4	Access granted to relevant information	s22
27.	SB23-000759 - NBN Shareholder Issues	6	Access granted to relevant information	s22
28.	SB23-000760 - NBN Valuation	4	Access granted to relevant information	s22
29.	SB23-000761 - Telecommunications Disaster Resilience Innovation Program	5	Access granted to relevant information	s22 s47C
30.	SB23-000762 - First Nations Digital Inclusion	6	Access granted to relevant information	s22
31.	SB23-000763 - Free NBN Services for up to 30,000 Families Election Commitment	4	Access granted to relevant information	s22
32.	SB23-000764 - Universal Service – Delivery and Reform	19	Partial access granted	s22 s47
33.	SB23-000765 - National Audit of Mobile Coverage	9	Partial access granted	s22 s47C s47G
34.	SB23-000766 - NBN Upgrades – Fixed Wireless	4	Partial access granted	s22 s47
35.	SB23-000767 - Better Connectivity Plan for Regional and Rural Australia – Overview and Status of Implementation	5	Access granted to relevant information	s22
36.	SB23-000768 - Mobile Black Spot Program (MBSP) Round 7 and RCP Round 3 - Combined Round	4	Access granted to relevant information	s22
37.	SB23-000769 - Mobile Black Spot Program – Implementation	19	Access granted to relevant information	s22
38.	SB23-000770 - Mobile Black Spot Program – Key Statistics	8	Access granted to relevant information	s22
39.	SB23-000771 - Mobile Black Spot Program – Improving Mobile Coverage Round	16	Access granted to relevant information	s22
40.	SB23-000772 - Peri-Urban Mobile Program (PUMP)	9	Access granted to relevant information	s22
41.	SB23-000773 - Regional Connectivity Program – Implementation	7	Partial access granted	s47G s47E(d)
42.	SB23-000774 - On Farm Connectivity Program	3	Access granted to relevant information	s22
43.	SB23-000775 - Viewer Access Satellite Television (VAST)	6	Access granted to relevant information	s22
44.	SB23-000776 - Postal Services Modernisation	4	Access granted to relevant information	s22
45.	SB23-000777 - Australia Post Performance and Remuneration	7	Access granted to relevant information	s22

Doc No.	Description of document	Num of Pages	Decision on access	Provision of FOI Act
46.	SB23-000778 - Australia Post Board Governance and Inquiries	4	Access granted to relevant information	s22
47.	SB23-000779 - Telecommunications Scams	5	Access granted to relevant information	s22
48.	SB23-000780 - Retail Level Consumer Safeguards	12	Partial access granted	s22 s47C
49.	SB23-000781 - Audio Description	5	Access granted to relevant information	s22

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-241

s22(1)(a)(ii)

Dear s22(1)  
(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 16 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

MS22-002348 dated 12 January, 2023 and MC23-002194 dated 7 February 2023

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

I have identified 2 documents that are relevant to your request. These documents were in the possession of the Department when your request was received. I have decided to:

- grant partial access to one document, and
- grant access in full to one document

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of a document relevant to your request are set out below.

#### 4.1 Section 34 - Cabinet documents

Section 34(1)(a) of the FOI Act provides that a document is an exempt document if both of the following are satisfied:

- (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted and
- (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet

Section 34(2) of the FOI Act provides that a document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which section 34(1) applies.

Section 34(3) of the FOI Act provides that a document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Paragraph 5.5 of the FOI Guidelines states that the Cabinet exemption is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined.

Paragraphs 27-29 of the Cabinet Handbook state:

27. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.
28. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive Governments have relied on the convention that their views, either written or spoken will remain confidential well into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.
29. This convention provides the Executive of Government with the opportunity to contest policy ideas in a highly confidential manner in order to ensure that the collective decision that ultimately arises from the Cabinet's deliberations is the best possible policy decision for the administration of the Government.

I have had regard to the content of the parts of the document marked 's34(3)' and am satisfied that it contains information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

In considering the application of this exemption, I undertook consultation with the Department of the Prime Minister and Cabinet, and confirmed that the relevant information remains subject to Cabinet confidentiality.

For the reasons set out above, I decided that parts of the document marked 's34' are exempt under section 34 of the FOI Act.

#### 4.2 Section 42 - Documents subject to legal professional privilege

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines state:

- 5.127 The FOI Act does not define LPP for the purposes of the exemption. To determine the application of this exemption, the decision maker needs to turn to common law concepts of LPP.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that parts of the document marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence
- the communication was brought into existence for the dominant purpose of giving or receiving legal advice
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that parts of the document marked 's42' are exempt from disclosure under section 42 of the FOI Act.

### 4.3 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

## Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that parts of the document marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that parts of the document marked 's47C' are conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest includes whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure



- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.5 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the document being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

Tiffany Karlsson  
Assistant Secretary  
Cities and Suburbs Unit  
Partnerships and Projects Division

Date: 21 February 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	12 January 2023	Ministerial Submission reference MS22-002348	7	Partial access granted	s47C s34(2) s34(3) s42 s22
2.	7 February 2023	Ministerial Correspondence reference MC23-002194	1	Access granted in full	

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**  
**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-226

s22(1)(a)(ii)

Dear s22(1)  
(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 1 January 2024, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 Your request

You requested access to:

With respect to the Minister's Sydney Airport Curfew Delegation Instrument 2020 (No. 1) dated 5 June 2020 provided as FOI 24-173 (copy attached).

Application is made for the identity and name of each person as at:

- a. 05 June 2020
- b. 28 June 2023
- c. 01 January 2024

in every one of the following positions within the Department of Infrastructure, Transport, Regional Development and Communications:

- Secretary
- Deputy Secretary
- SES 2 in Aviation and Airports Business Division
- SES 1 in Aviation and Airports Business Division
- EL 2 in Aviation and Airports Business Division
- Duty Officer

I have understood 'Duty Officer' to be defined as specified within the *Airport Curfew Delegation Instrument 2020 (No. 1)* which you attached to your request. That instrument defines 'Duty Officer' as follows:

"... an APS employee who is classified as an Executive Level 2 or an Executive Level 1 employee under the Classification Rules."

The position of Duty Officer, as specified in your request, whilst open to any EL1 or EL2 within the Department, is generally undertaken by a small cohort within that group of staff at that classification. As such, a large number of the EL1 and EL2 cohort, whilst qualified to do so, have not and would not, undertake the role of Duty Officer, as specified within the Delegation.

## 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

## 3 Decision

You have requested access to data that is held in computer systems ordinarily available to the Department. Pursuant to section 17 of the FOI Act, the Department has used its computer systems to produce 2 written discrete documents that contain some of the information you are seeking to access.

I have decided:

- to grant access in full to one document (Document 1)
- to refuse access to one document (Document 2)

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for making my decision, including the application of exemptions to Document 2, are set out below.

### 4.1 Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

The right of access under the FOI Act is limited to a document in the possession of the Department.

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document, and
- (b) the agency or Minister is satisfied that the document:
  - (i) is in the agency's or Minister's possession but cannot be found, or
  - (ii) does not exist.

With respect to the staff specified in points 3-5 of your request, the Department has been unable to identify any documents or data on a computer system that list SES Band 1 and 2 staff or EL 2 staff within the 'Aviation and Airports Business Division'.

The Department's Workforce Analytics team has conducted searches of the Department's staff records. No staff were identified as being employed within the 'Aviation and Airports Business Division' on the dates specified within your request.

I am satisfied that all reasonable steps have been taken to find a document, or data from which a discrete document could be generated, which would be relevant to that part of your request and that the document does not exist in the possession of the Department.

## 4.2 Section 47E - Documents affecting certain operations of agencies

Section 47E(c) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

Paragraph 6.114 of the FOI Guidelines states that for this conditional exemption to apply, the documents must relate to either:

- the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety, or
- the assessment of personnel – including the broader performance management policies and activities concerning competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

The Department has statutory obligations under the *Work Health and Safety Act 2011*, including a primary duty of care, so far as is reasonably practicable, to ensure that persons are not put at risk from work carried out as part of the conduct of the Department. It is the aim of the Department's Work Health and Safety framework to protect workers and other persons against harm to their health, safety and welfare through elimination or minimisation of risks arising from work, and I consider that the release of Document 2 could cause harm to their physical and mental wellbeing.

I am satisfied that disclosure of the personal information of public servants contained in Document 2 may substantially and adversely affect the Department's ability to meet its statutory obligations under the WHS Act. There is therefore a protective element to my decision to ensure that departmental staff are not subjected to inappropriate risks or harm.

I am satisfied that, because of the nature of the work performed by the public servants whose names are included in the documents, disclosure of that information may pose a risk to the health and safety of those staff.

The Department provides support and information to the Australian community and has many external facing contact points including phone and email addresses for the community to contact the Department in a safe and efficient way. These general contact details are readily available, including being published on the Department's website.

These specific channels of communication have been put in place to enable the Department to effectively manage its resources and protect the wellbeing of its staff. They are resourced to manage enquiries from members of the public, with staff appropriately trained to manage these types of enquiries. It is reasonable to expect that if these channels of communication were by-passed, the Department would experience a diversion of its resources, and in addition the management functions of the agency and its personnel would be detrimentally impacted.

Document 2 consists of a list of the names of all staff at EL 1 and EL2 classifications within the Department as at specified dates. I am satisfied that the content of Document 2 relates the management of personnel and, as outlined above, its disclosure would have an adverse impact on the workplace health and safety operations of the Department.

I am therefore satisfied that disclosure of Document 2 would, or could reasonably be expected to have, a substantial adverse effect on the management or assessment of personnel by the Department and it is conditionally exempt from disclosure under section 47E(c) of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 4.3 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

I am satisfied that Document 2, being a list of the names of staff at EL 1 and EL2 classifications within the Department as at specified dates, includes personal information about a number of individuals.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish



to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraph 6.153 of the FOI Guidelines states:

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. Such information may often also be publicly available, such as on an agency website.

Document 2 contains the names of Australian Public Service (APS) staff who are not in the Senior Executive Service (SES).

However, I note that in *Chief Executive Officer, Services Australia and Justin Warren* [2020] AATA 4557 (*Warren*), at paragraph 83, Deputy President Forgie noted:

The whole of the FOI Act is a finely tuned balance between two interests. In one side of the balance is the facilitation and promotion of access to a national resource that is information held by Government, which enables increased public participation in Government processes and increased scrutiny, discussion, comment, and review of the Government's activities. In the other is the protection of the national interest, the essential operation of government and the privacy of those who deal with government. It is most important, therefore, that its provisions be read very carefully and that presumptions should not be introduced that are not expressed, or necessarily implicit, in the words Parliament has chosen to achieve the balance that it wants. Those words should be the starting point of any consideration rather than any presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and increases the objects of the FOI Act.

I am satisfied that the disclosure of personal information contained within Document 2 would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the people to whom the personal information relates are not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information
- the information has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that Document 2 is conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the management function of an agency
- would prejudice the Department's ability to meet its statutory obligations and responsibilities in relation to the work health and safety of its employees
  - I note that the placing of the personal information of individuals who work for government agencies into the public domain has the potential to place those individuals at risk of harassment, abuse, threats and intimidation. This would be detrimental to the individuals concerned, and potentially also their families. Mitigating this risk is even more important with the prevalence of

social media and technology allowing individuals to be more easily identifiable and contactable in online environments

- the fact that the vast majority of the list in Document 2 does not identify staff as having discharged a power, made a decision or exercised a function that impacts on the rights and entitlements of members of the community, and the vast majority of those staff listed have not been in a role to exercise the functions associated with the delegation referenced within your request
- the fact that the relevant staff details are not publicly available, including in the Government Online Directory.

In particular, I consider that the public interest in increasing participation in government processes or in increasing scrutiny, discussion, comment and review of Government decision making is not advanced by the release of personal information of staff below SES level contained in the document. I note that this is consistent with the findings of the Administrative Appeals Tribunal in *Warren and Chief Executive Officer, Services Australia (Freedom of Information)* [2020] AATA 4557.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely  
s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Assistant Secretary  
Airports Branch  
Domestic Aviation and Reform Division

Date: 15 February 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	15/02/2024	List of Department Secretaries and Deputy Secretaries as at specified dates.	2	Access granted in full	
2.	15/02/2024	List of Department EL1 and EL2 staff as at specified dates.	56	Access refused in full	s47F s47E(c)

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-195

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 4 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 Your request

You requested access to:

documents relating to the following contract that were awarded by your department and published on the AusTender website:

Contract ID: CN393796 - Agency Reference ID: 0041003043

I am interested in obtaining the following documents associated with this contract:

- The contract title and description
- The name of the consultant engaged (if applicable)
- The terms and conditions of the contract
- The documents that were released to the market as part of the limited tender for this contract
- Any reports or similar submitted by the contractor as part of the contract

#### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

In regards to the fourth point of your request, you have asked for documents relating to the limited tender process for CN393796. The Commonwealth Procurement Rules, which are publicly available on the Department of Finance's website, list the conditions for limited tender. These conditions set out the rules for how a relevant entity must only conduct a procurement at or above the relevant procurement threshold through limited tender. To assist you, I have provided a link to the Condition for limited tender section of the Commonwealth Procurement Rules [Additional Rules | Department of Finance](#).

In regards to the remaining points of your request, I have identified 3 documents that are relevant. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to 1 document
- grant partial access to 2 documents

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

#### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

##### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.



## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act

- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the document are identifiable
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.2 Public interest considerations**

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### **Factors favouring disclosure**

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance

- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### Conclusion – disclosure is not in the public interest

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### 4.3 Section 22 – deletion of irrelevant and/or exempt material

Section 22 of the FOI Act applies to documents containing irrelevant and/or exempt material and allows an agency to delete such material from a document.

The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the document being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Jason Preece  
Assistant Secretary  
Rail project Delivery Branch  
Commonwealth Infrastructure Projects Division

Date: 12 February 2024

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-195

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	1/06/2011	Contract for scoping study – Plan Room Islington	5	Partial access granted	s22 s47F
2.	24/06/2011	Plan Room Scoping Study	14	Partial access granted	s47F
3.	Undated	Islington Plan Room Audit	35	Access granted in full	

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).




**Australian Government**

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**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-222

s22(1)(a)(ii)



Dear s22(1)

## **Decision on your Freedom of Information Request**

I refer to your request of 22 December 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### **1 Your request**

You requested access to:

any minutes, notes or summaries from any briefing between 14 November 2023 and 15 December 2023 (inclusive), provided by the Department to the Minister, or the Minister's Office, relating to the *Strategic Fleet Issues Paper*.

### **2 Authority to make decision**

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### **3 Decision**

I have identified 1 document that is relevant to your request. This document is a classified briefing provided by the Department to the Minister (reference MS23-005034) and was in the possession of the Department when your request was received. I have decided to refuse access in full to the document.



## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to the document relevant to your request are set out below.

### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

#### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that the document contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the document is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information

- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

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

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**


Your review rights in relation to this decision are set out at **ATTACHMENT A**.

### **Further information**

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Andrew Johnson  
Assistant Secretary  
Strategic Fleet Branch  
Surface Transport Emission and Policy Division

Date: 1 February 2024

**ATTACHMENT A.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

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You have the right to seek a review by the Information Commissioner of this decision.

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