Australian Government

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

Our reference: FOI 24-067

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 22 August 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:

- All documents and correspondence relating to contract CN3996362.

1.1 Clarification/Modification of scope of request

On 18 September, following consultation with you, you agreed to modify the scope of your request to the following:

- The executed copy of the contract and external correspondence for the period of 12 July to 21 August 2023 relating to contract CN3996362

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.

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.

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.

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I have decided to grant partial access to 14 documents and full 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.**

3 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.

3.1 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 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 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.

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.

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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.

3.2 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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)' contains 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 the 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.

3.3 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).

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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:

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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 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.

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3.4 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 an adverse effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
- 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

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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.

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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.

3.5 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.

4 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

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5 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.

6 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

7 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.

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)

Sally Todd
Assistant Secretary
Land Transport Policy Branch
Surface Transport Emissions and Policy Division

Date: 4 October 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-067

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	17 Jul 2023	Email to KPMG from DITRDCA Subject: Grant guidelines - Research and Innovation grants	1	Partial access granted	s 22 s 47F
2.	17 Jul 2023	Email attachment to Email: Grant guidelines - Research and Innovation grants File name: Research and Innovation guidelines – MAR 2023	22	Access granted in full	N/A
3.	17 Jul 2023	Email attachment to Email: Grant guidelines – Research and Innovation grants File name: Factors for consideration when assessing grants	1	Access granted in full	N/A
4.	17 Jul 2023	Email to DITRDCA from KPMG Subject: RE: RALCSP Research and Innovation grant – Introduction	3	Partial access granted	s 22 s 47F
5.	19 Jul 2023	Email to DITRDCA from KPMG Subject: RE: Research and Innovation grants assessment	2	Partial access granted	s 22 s 47E(d) s 47F
6.	24 Jul 2023	Email to DITRDCA from KPMG Subject: RE: RTE RALCSP Grant Assessment – Application Swap	3	Partial access granted	s 22 s 47E(d) s 47F
7.	02 Aug 2023	Email to KPMG from DITRDCA Subject: RE: Question: Deliverables as part of the Grant	3	Partial access granted	s 22 s 47F
8.	02 Aug 2023	Email to DITRDCA from KPMG Subject: RE: SmartyGrants Access	4	Partial access granted	s 22 s 47F
9.	03 Aug 2023	Email to DITRDCA from KPMG Subject: RE: RFQ 70 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Regional Australia Level Crossing Safety Program	16	Partial access granted	s 22 s 47E(d) s 47F
10.	03 Aug 2023	Email attachment to Email: RE: RFQ 70 Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Regional Australia Level Crossing Safety Program File name: Updated contract KPMG.pdf	8	Partial access granted	s 22 s 47E(d) s 47F

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Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
11.	10 Aug 2023	Email to KPMG from DITRDCA Subject: RE: Completion of grant assessments	3	Partial access granted	s 22 s 47F
12.	17 Aug 2023	Email to DITRDCA from KPMG Subject: RE: Reconciliation meeting	2	Partial access granted	s 22 s 47C s 47E(d) s 47F
13.	17 Aug 2023	Email to DITRDCA from KPMG Subject: RE: RALCSP RTE Purchase Order Number	5	Partial access granted	s 22 s 47F
14.	18 Aug 2023	Email to DITRDCA from KPMG Subject: RE: Conflict of Interest Declaration	3	Partial access granted	s 22 s 47C s 47F
15.	21 Aug 2023	Email to DITRDCA from KPMG Subject: RE: Research and innovation grants next steps	2	Partial access granted	s 22 s 47F
16.	13 July 2023	Email to grant recipients Subject: Level Crossing Research and Innovation grant	1	Partial access granted	s 47E(d)

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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

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.

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Australian Government

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

Our reference: FOI 24-020

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 22 July 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:

- Written correspondence pertaining to communications between the Department / Commonwealth, and the current lessees of s22(1) Christians Minde Settlement, namely s22(1)(a)(ii). This includes but is not limited to emails, file notes, records of telephone conversations and letters sent and received.
- Evidence of the Department / Commonwealth granting the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) permission to demolish and / or remove buildings, erections, or improvements on the land, and any reference to the relevant planning controls or instruments, floodplain risk management, and the 2014 Historic Heritage Management Plan.
- Evidence of the Department / Commonwealth granting the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) permission to erect new buildings or structures on the land or to make structural changes to existing buildings or structures on the land, and any reference to the relevant planning controls or instruments, floodplain risk management, and the 2014 Historic Heritage Management Plan.
- Evidence of the Department / Commonwealth granting the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) permission to cut down trees on the land.
- Evidence that the current lessees of s22(1) Christians Minde Settlement (Rs22(1)(a)(ii)) have maintained and repaired and kept in good repair all the buildings, erections and improvements on the land within the lease period (2011-23), in accordance with the 2014 Historic Heritage Management Plan and to the satisfaction of the Commonwealth / Department.
- The number or quantity of physical inspections made by the Commonwealth / Department staff to inspect the condition of heritage buildings at s22(1) Christians Minde Settlement for the duration of the lease term (1999 to 2023).

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- A full copy of the Draft Management Plan for Christians Minde by s22(1)(a)(ii) dated 1/3/2015 for the period 1/2/2015 to 30/6/2025.
- The amount of rent paid by the current lessees (s22(1)(a)(ii)) for s22(1) Christians Minde Settlement to the Commonwealth (per quarter) and detail of any changes to rent payments as per the agreed assessment periods between 1999 and 2023.

1.1 Clarification/Modification of scope of request

On 18 August 2023, following consultation with you, you agreed to modify the scope of your request to the following:

- Evidence of the Department / Commonwealth granting the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) **permission to demolish and / or remove buildings, erections, or improvements on the land**, and any reference to the relevant planning controls or instruments, floodplain risk management, and the 2014 Historic Heritage Management Plan - 2011-2023.
- Evidence of the Department / Commonwealth granting the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) **permission to erect new buildings or structures on the land or to make structural changes to existing buildings or structures on the land**, and any reference to the relevant planning controls or instruments, floodplain risk management, and the 2014 Historic Heritage Management Plan - 2011-2023.
- Evidence of the Department / Commonwealth granting the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) **permission to cut down trees on the land** - 2011-2023.
- Evidence that the current lessees of s22(1) Christians Minde Settlement (s22(1)(a)(ii)) have **maintained and repaired and kept in good repair all the buildings, erections and improvements on the land** (within the period 2011-23), in accordance with the 2014 Historic Heritage Management Plan and to the satisfaction of the Commonwealth / Department (note: this is a lease condition).
- The number or quantity of physical inspections made by the Commonwealth / Department staff to inspect the condition of heritage buildings at s22(1) Christians Minde Settlement in the period 2011-2023.
- A full copy of the **Draft Management Plan for Christians Minde** by s22(1)(a)(ii) dated 1/3/2015 for the period 1/2/2015 to 30/6/2025 *(note: this is partially supplied on the contract for sale but is missing the 'Heritage' section).*

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 9 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 3 documents and 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.**

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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 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 (LPP).

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 documents marked 's42' in the schedule 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 documents marked 's42' in the schedule are exempt from disclosure under section 42 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.

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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 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 Administrative Appeals Tribunal (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

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

6.143 As discussed in the leading s 47F Information Commissioner 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 the documents marked 's47F' in the schedule 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.

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

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.

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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 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.

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

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

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.

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.

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)

s22(1)(a)(ii)
a/g Assistant Secretary
Mainland Territories Branch
Territories Division

Date: 4 October 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-020

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	26/03/2018	Certificate	1	Partial access granted	s47F
2.	9/01/2015	Correspondence	16	Access refused in full	s47F
3.	17/06/2015	Correspondence	3	Partial access granted	s47F s22
4.	10/06/2015	Correspondence	23	Partial access granted	s47F s22
5.	19/05/2015	Correspondence	2	Partial access granted	s47F s22
6.	19/05/2015	Correspondence	61	Partial access granted	s47F s42 s22
7.	11/05/2015	Correspondence	3	Partial access granted	s47F s22
8.	2015	Request for advice	1	Access refused in full	s42
9.	16/03/2015	Correspondence	30	Access refused in full	s42

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

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.

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 24-060

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 17 August 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:

> X class ute recall REC-005754
>
> I wish to request the submitted documents and filing dates for this recall under the freedom of information act.

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

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 one written discrete document that contains the information you are seeking to access.

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I have decided to:

- grant access in full to four documents
- 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 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 document marked 's45' in the schedule consists 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 have decided that the document marked 's45' in the schedule is exempt from disclosure under section 45 of the FOI Act.

4.2 Section 47 - Documents disclosing trade secrets

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

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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 document marked 's47' in the schedule contains information that would disclose a trade secret.

For the reasons outlined above, I decided that the document marked 's47' in the schedule is exempt from disclosure under section 47(1)(a) of the FOI Act.

4.3 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

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

- 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 August 2023, 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 document marked 's47' in the schedule is exempt from disclosure under section 47(1)(b) of the FOI Act.

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 parts of the documents marked 's47F' includes personal information about an individual.

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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

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- 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.

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' 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.

4.5 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

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- 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 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 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.

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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.

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.

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

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)

s22(1)(a)(ii)

Acting Assistant Secretary
Vehicle Safety Operations Branch
Road and Vehicle Safety Division

Date: 29 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-060

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	09.08.2023	Recall notification PDF file	9	Partial access granted	s 47F
2.	09.08.2023	Technical Bulletin (work instructions)	11	Exempt in full	s 45 s 47
3.	09.08.2023	Owner Letter	1	Access granted in full	N/A
4.	09.08.2023	Additional recall details (communications strategy)	1	Access granted in full	N/A
5.	15.08.2023	Draft recall notice	2	Access granted in full	N/A
6.	Undated	ROVER system screenshot of the Recall Audit History	1	Access granted in full	N/A

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

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.

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Australian Government

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

Our reference: FOI 24-009

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 11 July 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. Copies of all emails, correspondence, papers, reports, meeting minutes and records of discussions and messages received by the Department of Infrastructure, Transport, Regional Development and Communication and the Arts relating to the appointment of former NSW Minister for the Arts Donald Thomas Harwin to the board of the Australia Council for the Arts (now operating as Creative Australia), from 1 October 2021 to 11 July 2023 inclusive.
2. Copies of all emails, correspondence, papers, reports, meeting minutes and records of discussions and messages sent by the Department of Infrastructure, Transport, Regional Development and Communication and the Arts relating to the appointment of former NSW Minister for the Arts Donald Thomas Harwin to the board of the Australia Council for the Arts (now operating as Creative Australia), from 1 October 2021 to 11 July 2023 inclusive.
3. Copies of all emails, correspondence, papers, reports, meeting minutes and records of discussions and messages received by the Department of Infrastructure, Transport, Regional Development and Communication and the Arts relating to the ongoing role of Donald Thomas Harwin as a board member of the Australia Council for the Arts (now operating as Creative Australia), from 1 October 2021 to 11 July 2023 inclusive.
4. Copies of all emails, correspondence, papers, reports, meeting minutes and records of discussions and messages received by the Department of Infrastructure, Transport, Regional Development and Communication and the Arts relating to complaints from third parties over the conduct of Donald Thomas Harwin, from 1 October 2021 to 11 July 2023 inclusive.
5. Copies of all emails, correspondence, papers, reports, meeting minutes and records of discussions and messages sent by the Department of Infrastructure, Transport, Regional Development and Communication and the Arts relating to complaints from third parties over the conduct of Donald Thomas Harwin, from 1 October 2021 to 11 July 2023 inclusive.

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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 18 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 8 documents
- grant partial access to 3 documents
- refuse access to 7 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(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.

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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 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 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 consists 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:

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- embarrassment
- public criticism

to the affected third party.

For the reasons outlined above, I have decided that the documents marked 's45' in the schedule 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 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.

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.

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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 documents marked 's47F' in the schedule 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

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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 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
- 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.

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.

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For the reasons outlined above, I decided that the documents marked 's47F' in the schedule 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 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 detrimentaleffect 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

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- 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.

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.

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

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- 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.

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.

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)

Alison Todd
Assistant Secretary
Arts Development and Investment Branch
Office for the Arts

Date: 25 September 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	02 March 2022	MS22-000188	19	Access refused in full	s47C s34(1)(c) s22(1)(a)(ii) s34(1)(a)
2.	01 March 2022	Email subject: confirming agreement to proposed revised remuneration	5	Partial access granted	s22(1)(a)(ii)
3.	22 March 2022	MS22-000531	12	Partial access granted	s22(1)(a)(ii) s34(3) s47F
4.	18 March 2022	Email subject: Board remuneration arrangements for former State and Territory Parliamentarians	6	Access granted to relevant information	s22(1)(a)(ii)
5.	24 March 2022	Email subject: Providing Mr Harwin's appointment instrument to the Remuneration Tribunal	7	Access granted to relevant information	s22(1)(a)(ii)
6.	06 April 2022	Email subject: Letter from the Remuneration Tribunal	3	Access granted to relevant information	s22(1)(a)(ii)
7.	07 April 2022	Email subject: Remuneration Tribunal advice	1	Access granted to relevant information	s22(1)(a)(ii)
8.	07 April 2022	Email subject: Letter from the Remuneration Tribunal	2	Access granted to relevant information	s22(1)(a)(ii)
9.	01 March 2022	Email subject: Proposed appointment – Australia Council Board documentation for completion	6	Access granted to relevant information	s22(1)(a)(ii) s47F
10.	01 March 2022	Cabinet Brief	1	Access refused in full	s34(1)(c)
11.	17 March 2022	Email subject: Date of appointment	1	Access granted to relevant information	s22(1)(a)(ii)
12.	19 March 2022	Email subject: MS22-000531	1	Access refused in full	s47C
13.	07 June 2023	Email subject: Creative Australia Appointments	4	Access refused in full	s47C
14.	23 March 2022	Email subject: Proposed omnibus arts appointments media release	1	Partial access granted	s22(1)(a)(ii) s47C
15.	22 March 2022	Email subject: Don Harwin	1	Access granted to relevant information	s22(1)(a)(ii)

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Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
16.	23 May 2023	Email subject: Creative Australia	3	Access refused in full	s47C
17.	01 February 2023	MC23-031831	1	Access refused in full	s45
18.	21 November 2022 to 26 May 2023	List of correspondence	9	Access refused in full	s45

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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

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.

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Australian Government

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

Our reference: FOI 24-062

s22(1)(a)(ii)

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 18 August 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 between the Department and either the Minister for Infrastructure, Transport, Regional Development and Local Government or alternatively the Minister's office, regarding Freedom of Information requests being managed by the Department in relation to the Maritime Strategic Fleet Taskforce, the Aviation White Paper, the review of the Land Transport National Partnership Agreement and applications for Qatar Airways and Turkish Airlines for additional international flights.*
>
> *The request includes copies of communications via written briefings, reports, meeting notes, emails, text messages or other digital messaging services.*
>
> *The time period covered by this request is commencing 20 June 2023 through to 10 August 2023."*

1.1 Clarification/Modification of scope of request

On 25 August 2023 following consultation with your office, you agreed to modify the scope of your request to the remove the following:

> *"The applicant is willing to agree to your suggestion that the Department's weekly reports be excluded from the search, noting that emails attaching the weekly reports would still form part of the original request if the content of text in the email itself (as opposed to any attachments) was captured by the terms of the request.*

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Further, for additional clarification, if there are emails or other communications captured by the request which contain attachments and if treated as separate documents the attachments do not relate to the request, then those specific attachments would be considered to be excluded from the 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

I have identified 13 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 12 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 the 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.

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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' 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 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 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of 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.

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

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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 the parts of the documents marked 's47E(d)' 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 (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

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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
- the information is current and has not lost its sensitivity through the passage of time

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- 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.

4.4 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:

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- 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 adverse effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the management function of an agency
- 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.

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.

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.

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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 entities 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.

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.

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)

Lachlan Wood
A/g First Assistant Secretary and Chief Financial Officer
Finance, Governance, Budget and Business Services Division

Date: 26 September 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-062

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	16/08/2023	Email correspondence: FOI 24-008 - Stakeholder Notification – Imminent release + documents proposed for release	17	Partial access granted	s22 s47E
2.	28/06/2023	Email correspondence: FOI 23-300 – Stakeholder Notification – New request received	2	Partial access granted	s22 s47E
3.	18/07/2023	Email correspondence: FOI 23-301 – Email to MO – Courtesy Consultation	24	Partial access granted	s22 s47C s47E
4.	18/07/2023	Email correspondence: FOI 23-301 – Email from MO – Query re: Courtesy Consultation	2	Partial access granted	s22 s47E
5.	19/07/2023	Email correspondence: FOI 23-301 – Email from MO – Submissions to Courtesy Consultation	1	Access provided in full to relevant information	s22
6.	21/07/2023	Email correspondence: FOI 23-301 - Stakeholder Notification – Imminent release	2	Partial access granted	s22 s47E
7.	14/08/2023	Email correspondence: Internal Review 23-301 - Stakeholder Notification – New request received	2	Partial access granted	s22 s47E
8.	21/07/2023	Email correspondence: FOI 24-017 – Stakeholder Notification – New request received	2	Partial access granted	s22 s47E
9.	08/08/2023	Email correspondence: FOI 24-024 – Stakeholder Notification – New request received	2	Partial access granted	s22 s47E s47F
10.	08/08/2023	Email correspondence: FOI 24-025 – Stakeholder Notification – New request received	2	Partial access granted	s22 s47E s47F
11.	15/08/2023	Email correspondence: FOI 24-048 – Stakeholder Notification – New request received	2	Partial access granted	s22 s47E s47F
12.	27/07/2023	Email correspondence: FOI 24-032 – Stakeholder Notification – New request received	2	Partial access granted	s22 s47E
13.	26/07/2023	Email correspondence: FOI status report for week ending Wednesday 26 July 2023	20	Partial access granted	s22 s47E

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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

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.

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Australian Government

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

Our reference: FOI 24-032

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 25 July 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 documents as defined below, dated between 1 June 2022 and 24 July 2023 held by the Department relating to the request from Turkish Airlines for additional capacity in Australia:
>
> a) Copies of correspondence including emails between Turkish Airlines and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);
>
> b) Copies of correspondence between Turkish Airlines and the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister);
>
> c) Copies of briefings from the Department to the Minister; and
>
> d) Copies of any instructions from the Minister or the Minister's office to the Department;
>
> e) Correspondence between the Minister and the Minister for Trade and Tourism.

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 10 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

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I have decided to:

- grant partial access to seven documents
- refuse 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 33 – Documents affecting international relations

Section 33(a)(iii) 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 international relations of the Commonwealth.

Paragraph 5.36 of the FOI Guidelines relevantly provides:

> The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the former diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

The information marked 's33(a)(iii)' in the documents relates to relations between the Commonwealth and Türkiye. I am satisfied that there is a reasonable expectation that the release of certain material in these documents would disclose information about international relations with Türkiye. This includes information in relation to your request.

I am also satisfied that there is a reasonable expectation of damage to the international relations of the Commonwealth. If this information were made publicly available, it would have the capacity to prejudice or undermine the Department's relations with Türkiye. Moreover, disclosure could also potentially prejudice the flow of confidential information between the Commonwealth and other countries that would reflect an undermining of trust between parties.

For the reasons set out above, I decided that the parts of the documents marked 's33(a)(iii)' are exempt under section 33(a)(iii) 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

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- 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 consists 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
    - exposure to ridicule or
    - public criticism to the affected third party.

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

4.3 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

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- 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 23 August 2023, 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 have decided that the documents marked 's47' in the schedule are exempt from disclosure under section 47(1)(b) of the FOI Act.

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 parts of the documents marked 's47F' includes personal information an individual.

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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

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- 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 individual whose personal information is contained in the documents 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
- 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 have 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 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.

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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 part 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.

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).

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' is 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.

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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 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

- 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.
- 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.

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 have 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.

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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.

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.

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.

9 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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

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)

Jim Wolfe
Assistant Secretary
International Aviation Branch
International Aviation, Technology & Services Division

Date: 25 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-032

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	28 November 2022	Email from Turkish Airlines to the Department	2	Partial access granted	s47F s45 s47 s22
		Attachment A	1	Partial access granted	s47F s45 s47
2.	13 December 2022	Email from the Department to Turkish Airlines	2	Partial access granted	s47F s45 s47 s22
		Attachment A	1	Partial access granted	s47F s45 s47 s33
3.	14 December 2022	Email from Turkish Airlines to the Department	2	Partial access granted	s47F s45 s47
4.	14 December 2022	Email from Turkish Airlines to the Department	3	Partial access granted	s47F s45 s47 s47G
5.	14 December 2022	Email from the Department to Turkish Airlines	4	Partial access granted	s47F s45 s47
6.	14 February 2023	Email from the Department to Turkish Airlines	1	Partial access granted	s47F s45 s47 s33 s22
7.	15 February 2023	Email from Turkish Airlines to the Department	2	Partial access granted	s47F s22 s45 s47
8.	5 June 2023	Email from Turkish Airlines to the Department	4	Access refused in full	s33 s45 s47
9.	15 June 2023	Email from the Department to Turkish Airlines	4	Access refused in full	s33 s45 s47
10.	3 July 2023	Email from Turkish Airlines to the Department	5	Access refused in full	s33 s45 s47

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

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.

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 24-034

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 26 July 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 reasons behind the decision to refuse Qatar Airways additional landing rights into Australian capital cities.
>
> In particular:
> - Finalised briefing notes to the Minister on this issue
> - Requests from the Minister and/or her office to the Department on this issue
> - Correspondence to the Minister and/or the Department from Qantas on the Qatar application
> - Requests for meetings from Qantas with the Department and/or the Minister/Minister's staff on the Qatar application
> - Records of meetings held with Qantas by the Minister/Minister's staff and/or the department on the Qatar application.

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 full access to relevant information in two documents
- refuse access to two documents

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

A schedule setting out the documents relevant to your request, with my decision in relation to this 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 the documents relevant to your request are set out below.

4.1 Section 33 – Documents affecting international relations

Section 33(a)(iii) 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 international relations of the Commonwealth.

Paragraph 5.36 of the FOI Guidelines relevantly provides:

> The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the former diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

The information marked 's33(a)(iii)' in the document relate to relations between the Commonwealth and Qatar. I am satisfied that there is a reasonable expectation that the release of certain material in the document would disclose information about international relations with Qatar. This includes information in relation to your request.

I am also satisfied that there is a reasonable expectation of damage to the international relations of the Commonwealth. If this information were made publicly available, it would have the capacity to prejudice or undermine the Australian Government's relations with Qatar. Moreover, disclosure could also potentially prejudice the flow of confidential information between the Commonwealth and other countries that would reflect an undermining of trust between parties.

For the reasons set out above, I decided that the document marked 's33(a)(iii)' in the schedule are exempt under section 33(a)(iii) 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 document marked 's45' in the schedule consist of information:

- that is specifically identified within the documents as being confidential in nature

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

- 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
    - exposure to ridicule or
    - public criticism to the affected third party.

For the reasons outlined above, I have decided that the document marked 's45' in the schedule is 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 document 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 document 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.

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

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.

4.4 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 early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is an adverse effect on the open consideration of all options that have potential to be put forward

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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.

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

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

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.

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.

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)

Jim Wolfe
Assistant Secretary
International Aviation Branch
International Aviation, Technology & Services Division

Date: 25 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-034

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	4 January 2023	Ministerial Submission	13	Access refused in full	s33 s47C
2.	14 July 2023	Email from Department to Minister Office Subject: RE: Draft Letter to Qatar Civil Aviation Authority	2	Access granted in full to relevant information	s22
3.	14 July 2023	Email from Minister Office to Department Subject: Re: Draft Letter to Qatar Civil Aviation Authority	4	Access granted in full to relevant information	s22
4.	14 October 2022	Email from Qantas to the Department	5	Access refused in full	s45

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

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.

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 24-066

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 22 August 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 final report produced by the independent Strategic Review of the federal Infrastructure Investment Program, completed by Clare Gardiner-Barnes, Reece Waldock and Mike Mrdak.
>
> The time frame for this search is for documents created between June 1 to August 22, 2023. Minister Catherine King has received a copy of this 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 one document that is 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 one document.

4 Finding of facts and reasons for decision

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

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

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' contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out opinions, advice and recommendations from the independent reviewers, obtained in the course of deliberative processes in the functions of the Department, the Minister for Infrastructure, Transport, Regional Development and Local Government, and the Australian Government.

For the reasons outlined above, I decided that the document marked 's47C' 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

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

- 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 early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a detrimental 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

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

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.

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.

Yours sincerely

s22(1)(a)(ii)

Robyn Legg
Assistant Secretary
Infrastructure Investment Program Review
Land Transport Infrastructure Division

Date: 19 September 2023

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

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

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.

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 24-017

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 20 July 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 as defined below, dated between 1 June 2022 and 18 July 2023 held by the Department relating to the request from Qatar Airways for additional air routes in Australia:*
>
> *A) Copies of correspondence including emails between Qatar Airways and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department);*
> *B) Copies of correspondence between Qatar Airways and the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister);*
> *C) Copies of briefings from the Department to the Minister;*
> *D) Copies of any instructions from the Minister or the Minister's office to the Department;*
> *E) Correspondence between the Minister and the Minister for Trade and Tourism;"*

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.

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

I have decided to:

- grant access in full to relevant information in two documents
- 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 exemptions apply to the documents relevant to your request are set out below.

4.1 Section 33 – Documents affecting international relations

Section 33(a)(iii) 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 international relations of the Commonwealth.

Paragraph 5.36 of the FOI Guidelines relevantly provides:

> The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the former diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

The information marked 's33(a)(iii)' in the documents relate to relations between the Commonwealth and Qatar. I am satisfied that there is a reasonable expectation that the release of certain material in the documents would disclose information about international relations with Qatar.

I am also satisfied that there is a reasonable expectation of damage to the international relations of the Commonwealth. If this information were made publicly available, it would have the capacity to prejudice or undermine the Australian Government's relations with Qatar. Moreover, disclosure could also potentially prejudice the flow of confidential information between the Commonwealth and other countries that would reflect an undermining of trust between parties.

For the reasons set out above, I decided that the information contained in documents marked 's33(a)(iii)' in the schedule are exempt under section 33(a)(iii) 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

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

- 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
    - exposure to ridicule or
    - public criticism to the affected third party.

For the reasons outlined above, I have decided that the documents marked 's45' in the schedule 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'.

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

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.

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.

4.4 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:

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- 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 detrimental effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the effectiveness of testing or auditing procedures

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.

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.

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

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

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.

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.

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)

Jim Wolfe
Assistant Secretary
International Aviation Branch
International Aviation Technology & Service Division

Date: 21 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-017

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	4 January 2023	Ministerial Submission MS23-001858	13	Access refused in full	s33(a)(iii) s45 s47C
2.	14 July 2023	Email from Department to Minister Office Subject: RE: Draft Letter to Qatar Civil Aviation Authority	2	Access granted in full to relevant information	s22
3.	14 July 2023	Email from Minister Office to Department Subject: Re: Draft Letter to Qatar Civil Aviation Authority Attachment A - International Aviation – KEY POINTS	4 2	Access granted in full to relevant information Access granted in full to relevant information	s22 s22
4.	17 November 2022	Ministerial Submission MS22-002057	10	Access refused in full	s33(a)(iii) s45 s47C

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

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.

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 24-010

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 13 July 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. *Submissions, briefing or other correspondence provided to the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, that relate to the McKoy Street and Hume Freeway Intersection Upgrade project in Wodonga, Victoria (the project);*
2. *Internal assessments, evaluations or reviews of the project undertaken by the Department since 1 June 2022;*
3. *The business case for the project (if more than one draft or version, the most recent draft or final version);*
4. *Briefing prepared by the Department for Senate Estimates Committee hearings in May 2023 that relates to the project;*
5. *Any correspondence relating to the project sent by Minister King and/or the Department to the Victorian Government since 1 June 2022*

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 9 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

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

I have decided to:

- grant access in full to relevant information in one document
- grant partial access to two documents
- refuse access to six 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 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

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

6.35 The potential damage need not be quantified,https://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.

Consultation with a State or Territory

In making my decision, I consulted with the relevant State and I took into account any concerns raised by the relevant State.

For the reasons outlined above, I decided that the documents 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.

4.2 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 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.

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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:

- 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:

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(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 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.

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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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

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.

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)

Robert Bradley
Assistant Secretary
Victoria, Tasmania and South Australia Infrastructure Branch
Land Transport Investment Division

Date: 19 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 2

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	20 Jun 2023	Department Project Proposal Report – McKoy Street Upgrade.	48	Access refused in full	s47C s47B
		Appendix A2	1	Access refused in full	s47C s47B
		Appendix A3 – Response Options Assessment Report	4	Access refused in full	s47C s47B
		Appendix B	80	Access refused in full	s47C s47B
		Appendix C	37	Access refused in full	s47C s47B
		Appendix D	20	Access refused in full	s47C s47B
		Appendix E	3	Access refused in full	s47C s47B
		Appendix F	20	Access refused in full	s47C s47B
		Appendix G	58	Access refused in full	s47C s47B
		Appendix H	6	Access refused in full	s47C s47B
		Appendix I	78	Access refused in full	s47C s47B
		Appendix J	16	Access refused in full	s47C s47B
		Appendix K	3	Access refused in full	s47C s47B
		Appendix L	118	Access refused in full	s47C s47B
		Appendix M	1	Access refused in full	s47C s47B
		Appendix N – Indigenous Participation Plan	7	Access refused in full	s47C s47B
2.	25 Aug 2022	Email from Department to Victoria Subject: McKoy Street PPR Victoria		Access refused in full	s47C s47B
3.	April 2023	Victorian Uber Table April 2023 for Estimates April 2023	27	Partial access granted	s22 s47C
4.	06 Feb 2023	Canavan Table – Victoria for Senate Estimates February 2023 Excel spreadsheet outlining all Infrastructure Investment Program – Australian Government Committed	23	Access granted in full to relevant information	s22

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
		Projects as at October Budget 2022-2023.			
5.	20 Jun 2022	Appendix A1	1	Access refused in full	s47C s47B
6.	March 2023	McKoy Street – Hume Freeway Intersection Upgrade	415	Access refused in full	s47C s47B
7.	No date	McKoy Street Intersection – Project Overview – DoT, MRPV and DITRDC meeting email summary	1	Access refused in full	s47C s47B
8.	9 September 2022	McKoy Street PPR status	1	Access refused in full	s47C
9.	No date	Ready Reckoner – VIC ROSI	2	Partial access granted	s22 s47D

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

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.

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 23-314
s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 29 June 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:

> All correspondence and supporting documents relevant to the assessment and decision between:
>
> - Minister Joyce and his office
> - Minister Joyce and the Department
> - Minister Joyce and the Moorabbin Airport Corporation
> - Minister Joyce's office and the Department
> - Minister Joyce's office and the Moorabbin Airport Corporation
> - The department and Moorabbin Airport Corporation
> - Any other document relevant to the decision

1.1 Clarification/Modification of scope of request

On 7 August 2023, following consultation with you, you agreed to modify the scope of your request to the following:

- A copy of the completed assessment process for the 2021 Draft Master Plan for the Moorabbin Airport, rejected by the then Barnaby Joyce in approximately March 2022.
- A copy of any correspondence held by the Department in the Parliamentary Document Management System from Minister Barnaby Joyce to Moorabbin Airport Corporation outlining the reasons for the rejection of the 2021 Draft Master Plan
- A copy of any new/fresh Draft Master Plan(s) held by the Department in the Parliamentary Document Management System, submitted between 31st of March 2022 until 4th August 2023

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

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 seven 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 two documents
- refuse access to five 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 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 's42' in the schedule 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.

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

For the reasons outlined above, I decided that the document marked 's42' in the schedule are exempt from disclosure under section 42 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 document 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 document 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 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.

4.3 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

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(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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 document marked 's47E(d)' in the schedule 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 the document marked 's47E' 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.

4.4 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.

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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.

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.

4.5 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)

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- 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 early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is an adverse effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice security, law enforcement, public health or public safety
- could reasonably be expected to impede the administration of justice generally, including procedural fairness
- could reasonably be expected to impede the administration of justice for an individual
- could reasonably be expected to impede the flow of information to the Department as a regulatory agency
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future
- could reasonably be expected to prejudice the competitive commercial activities of an agency
- 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.

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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 of the FOI Act as outlined above.

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.

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.

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

Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

Phil McClure
Assistant Secretary
Airports Branch
Domestic Aviation & Reform Division

Date: 20 September 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-314

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	29 March 2022	MS22-000554 Letter to Moorabbin Airport from Barnaby Joyce notifying of refusal of the draft Master Plan 2021	2	Access granted in full to relevant information	s22
2.	29 March 2022	Attachment C to MS22-000554	10	Access refused in full	s47E(d) s42
3.	29 March 2022	Attachment E to MS22-000554 Department's assessment of the draft Master Plan against section 71 of the *Airports Act* 1996	25	Access granted in full	
4.	28 February 2023	Moorabbin Airport Corporation letter to the Department	3	Access refused in full	s47G
5.	24 March 2023	Moorabbin Airport withdrawn fresh draft 2021 Master Plan	338	Access refused in full	s47G
6.	24 March 2023	Moorabbin Airport fresh draft Master Plan – cover letter and Supplementary Materials	90	Access refused in full	s47G
7.	28 June 2023	Moorabbin Airport re-submitted/updated fresh draft Master Plan	338	Access granted in full (public document following Minister's approval. Available at https://www.moorabbinairport.com.au/about-us/planning)	

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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

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.

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Australian Government

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

Our reference: FOI 24-047

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 9 August 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 Merimbula Airport Sale Agreement between the commonwealth and Bega Shire Council

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 are 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 this document.

4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemption applies to parts of 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).

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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 ...

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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 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 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.

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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.

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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.

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.

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Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

McClure Phil

Digitally signed by: McClure Phil
DN: CN = McClure Phil
Date: 2023.09.19 13:13:38 + 10'00'

Phil McClure
Assistant Secretary
Airports Branch
Domestic Aviation and Reform Division

Date: 19 September 2023

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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

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.

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Australian Government

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

Our reference: FOI 24-011

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 17 July 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:

> *I am seeking access to a heritage report about a property within the Jervis Bay Territory under the Freedom of Information Act 1982 (FOI Act).*
>
> *Report title: Christian's Minde Settlement, Jervis Bay Territory - Historic Heritage Management Plan, circa 2014.*

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 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.

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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.

This provision of the FOI Act specifically extends to the personal information of deceased persons.

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

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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.

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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

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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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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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.

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)

Jane Christie
Assistant Secretary
Mainland Territories Branch
Territories Division

Date: 14 September 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	January 2015	Christian's Minde Settlement, Jervis Bay Territory Historic Heritage Management Plan Report prepared for the Department of Infrastructure and Regional Development	164	Partial access granted	s47F
2.	January 2015	Christian's Minde Settlement, Jervis Bay Territory Historic Heritage Management Plan – Volume 2 Inventories Report prepared for the Department of Infrastructure and Regional Development	104	Partial access granted	s47F

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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

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.

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Australian Government

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

Our reference: FOI 24-059

s22(1)(a)(ii)

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 16 August 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:

> *"We request under the freedom of information provisions the specific documents relating to the "Quigley & Watts Health Assessment and Peer Review" commissioned by Australia Pacific Airports Melbourne (APAM) in support of the preliminary draft Melbourne Third Runway Major Development Plan (MDP), submitted around February 2022.*
>
> *We are making this request in the public interest.*
>
> *The documents requested were not made public nor were communities fully consulted of their contents on matters which have direct impact to health and wellbeing.*
>
> *Please provide information of availability and associated costs."*

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.

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3 Background

As per our discussion and subsequent email of 8 September 2023, the department informed you that there was public consultation undertaken on the preliminary Melbourne Third Runway Major Development Plan (MDP). This document is publicly available and can be found via the following link: Virtual Visitor Centre | Melbourne Airport | Community Analytics (caportal.com.au).

Furthermore, you confirmed that you were seeking the underpinning assessment of the Quigley and Watt health assessment regarding the Melbourne Third Runway MDP. As per our discussion on 8 September 2023, this document does not exist in the department's possession.

On 11 September 2023, you requested that we continue processing this FOI request "for the relevant chapter from APAM". As noted above, there is a public version of this chapter which you can gain access to. Noting your request for the relevant chapter, the department has located one document which is in scope for your request. Further information on access to this document is provided below.

4 Decision

I have identified one document that is 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 this document.

5 Finding of facts and reasons for decision

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

5.1 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.

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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.

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.

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.

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.

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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 adverse 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.

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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

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.

8 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.

Yours sincerely

Phil McClure
Assistant Secretary
Airports Branch
Domestic Aviation and Reform Division

Date: 12 September 2023

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

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

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.

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Australian Government

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

Our reference: FOI 23-304

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 26 June 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) Submissions, briefing or other correspondence provided to the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, that relate to the Albury-Wodonga Regional Deal;

(2) Briefing materials provided to Australian Government officials participating in discussions with New South Wales Government and Victorian Government representatives on the Albury-Wodonga Regional Deal in May 2023;

(3) Minutes or other records of discussions between Australian Government, NSW Government and Victorian Government officials on the Albury-Wodonga regional deal in May 2023;

(4) Briefing prepared by the Department for Senate Estimates Committee hearings in May 2023 that relates to the Albury-Wodonga Regional Deal.

I do not seek access to duplicates of any document captured within the scope of the request; nor the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent. I do ask that junior officials' positions or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g. '[redacted]@infrastructure.gov.au'.

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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 6 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 2 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.**

4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the document/s 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:

(a) 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

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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/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-6-conditional-exemptions but the effect on relations arising from the disclosure must be adverse.

- Having regard to the above, I am satisfied that disclosure of the documents marked s.47B(a) in attachment A would interrupt or create difficulty in negotiations or discussions that are underway, adversely affect the administration of a continuing Commonwealth-State project, and adversely affect the continued level of trust or co-operation in existing inter-office relationships.

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 and/or Territory governments, and I took into account any concerns raised by the relevant State and/or Territory.

For the reasons outlined above, I decided that the documents 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.

4.2 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.

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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.

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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:

- 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 developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a negative effect on the open consideration of all options that have potential to be put forward.

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

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 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.

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.

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

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.

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)

Fiona Yule
Assistant Secretary
City and Regional Partnerships Branch
Partnerships and Projects Division

Date: 6 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-304

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	12/05/2023	Senate Brief SB23-000616 - City and Regional Deals	6	Partial access granted Access granted to relevant information	s.22(1)(a)(ii)
2.	05/04/2023	Albury Wodonga Regional Projects Summary of Commitments	1	Access granted in full	-
3.	24/11/2022	Ministerial Submission	33	Access refused in full	s.47B(a) s.47C
4.	13/06/2023	Ministerial Submission	8	Access refused in full	s.47B(a) s.47C
5.	08/02/2023	Ministerial Submission	17	Access refused in full	s.47B(a) s.47C
6.	04/05/2023	Intergovernmental Steering Committee Meeting Minute	4	Access refused in full	s.47B(a) s.47C

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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

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.

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Australian Government

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

Our reference: FOI 23-309

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 28 June 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:

> All correspondence from Zoe Daniel MP or the office of Zoe Daniel MP to the Infrastructure Minister's Office since 21 May 2022.

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 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 exemption apply to the parts of documents relevant to your request are set out below.

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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 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

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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 individual 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 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.

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.

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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 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.

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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.

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.

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

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

Date: 31 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-309

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	30/08/2022	Letter to The Hon. Catherine King MP from Zoe Daniel MP Subject: Yalukit William Nature Reserve on the former Elsternwick Park Golf Course site.	12	Partial access granted	s47F
2.	Undated	Letter to The Hon. Catherine King MP from Zoe Daniel MP Subject: Women's access to sporting changerooms in Goldstein	15	Partial access granted	s47F

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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

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.

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Australian Government

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

Our reference: FOI 24-006

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 08 July 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:

> I wish to access the following documents relating to grant funding made available under the Regional Airports Program which was awarded to the operator of the Leongatha Aerodrome.
>
> The grant ID as per the Australian Governments 'Grant Connect' website is: GA122835-V1. Further details relating to the grant and grant applicant are published on the Grant Connect website at https://www.grants.gov.au/Ga/Show/cd06a2ac-47aa-4a87-bf96-8932fb7fcdc5
>
> Specifically, I am seeking the following documents:
>
> • The grant/funding application made by the applicant (The Trustee For Leongatha Aerodrome Users Unit Trust) or their agent/representative with respect to the above funding program.
>
> • A copy of the final/signed grant/funding agreement.
>
> • A copy of any subsequent requests for variation to the agreement.
>
> • A copy of any documents relating to acquittal of funds or reporting on the progress of the funded activities.
>
> • Copies of any correspondence between the applicant or their agent and the Department of Department of Infrastructure, Transport, Regional Development, Communications and the Arts in relation to this grant program from 1 January 2020 until today.
>
> I note that these documents may contain personal information of individuals. I am not seeking access to personal information and consent to its removal from the documents.

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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 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
- 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.**

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

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- 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 20 July 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with the 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' are exempt from disclosure under section 47(1)(b) of the FOI Act.

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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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.

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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)' contains 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 the 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.

4.3 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 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.

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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.

4.4 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)

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- 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 have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
- could reasonably be expected to be an unreasonable disclosure of business, commercial or financial affairs 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.

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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.

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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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

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.

Yours sincerely

s22(1)(a)(ii)

Ben Vincent
Assistant Secretary
Domestic Policy and Programs Branch
Domestic Aviation & Reform Division

Date: 7 September 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-006

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	12/12/2019	RAPI0000099 -Application: from Leongatha Aerodrome Users Unit Trust (LAUUT)	10	Partial access granted	s22 s47G
2.	12/12/2019	RAPI0000099 – Submission for funding 1: 'Attachment 1 – Assessment Criterion 1 – Demonstrated need for the project'	12	Access granted in full	
3.	12/12/2019	RAPI0000099 – Submission for funding 2: 'Attachment 2 – Assessment Criterion 2 – Capacity, capability and resources – part 1'	6	Access granted in full	
4.	12/12/2019	RAPI0000099 – Submission for funding 3: 'Attachment 3 – Assessment Criterion 2 – Capacity, capability and resources – part 2'	8	Access granted in full to relevant information	s22
5.	12/12/2019	RAPI0000099 – Submission for funding 4: 'Attachment 4 - Assessment criteria 3 – Impact and Benefit of grant funding for the project'	4	Partial access granted	s47
6.	12/12/2019	RAPI0000099 - Project Plan: 'Existing Aerodrome Plan – Leongatha Aerodrome Regional Aviation Fund Submission'	1	Access granted in full	
7.	12/12/2019	RAPI0000099 - Trust Deed	5	Partial access granted	s22 s47G
8.	12/12/2019	RAPI0000099 CEO Support Template	1	Access granted in full to relevant information	s22
9.	12/12/2019	RAPI0000099 - Letter of Support from the Hon Gordon Rich-Phillips MP	2	Access granted in full	
10.	17/9/2020	GA RAPI000099 The trustee for Leongatha Aerodrome Users Unit Trust: Executed Grant Agreement	32	Partial access granted	s22 s47G
11.	8/4/2021	RAPI000099 Leongatha Aerodrome Users Pty Ltd Deed of Novation	4	Access granted in full to relevant information	s22
12.	8/8/2022	RAPI0000099 -Application: from Leongatha Aerodrome Users Unit Trust (LAUUT)	3	Partial access granted	s22 s47E
13.	9/11/2022	RAPI0000099 – Submission for funding 1: 'Attachment 1 – Assessment Criterion 1 – Demonstrated need for the project'	56	Partial access granted	s22 s47G

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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

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.

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.

As an Affected Third Party, if you object to disclosure of your information, an application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 30 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.

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Australian Government

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

Our reference: FOI 23-315

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 30 June 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:

i. Risk assessments (or however titled) related to circumstances where instances of Airservices staff shortages may cause normal Air Traffic Service (ATS) provision to airspace users to cease, be interrupted or cause increased airborne traffic delays. (E.g. the use of Traffic Information Broadcast by Aircraft (TIBA), Temporary Restricted Airspace (TRA), any change of controlled airspace services causing Class G type practices instead, or altered flow control and increased separation practices to manage the workload in a reduced staff environment).

ii. Completed investigations to events occurring within airspace subject to service level changes/reductions affected by changes to Airservices staff shortages.

iii. Data relating to the number of instances and duration of TIBA and TRA promulgation and TWR services closures due to staff shortages, beyond that which is available here: https://www.casa.gov.au/freedom-information-foi-oar-spreadsheet-logs

iv. Any correspondence between your organisation and any of the following - Airservices Australia, the Civil Aviation Safety Authority, the Australian Transport Safety Bureau, government departments (including Ministers or their staff), or any third party stakeholders (e.g. airlines) - related to disruptions to the provision of regular ATS due to staff shortage issues at Airservices.

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1.1 Clarification/Modification of scope of request

On 03 July 2023, the department advised that we transferred the following parts of your request to Airservices Australia and the Civil Aviation Authority:

i. Risk assessments (or however titled) related to circumstances where instances of Airservices staff shortages may cause normal Air Traffic Service (ATS) provision to airspace users to cease, be interrupted or cause increased airborne traffic delays. (E.g. the use of Traffic Information Broadcast by Aircraft (TIBA), Temporary Restricted Airspace (TRA), any change of controlled airspace services causing Class G type practices instead, or altered flow control and increased separation practices to manage the workload in a reduced staff environment).

ii. Completed investigations to events occurring within airspace subject to service level changes/reductions affected by changes to Airservices staff shortages.

iii. Data relating to the number of instances and duration of TIBA and TRA promulgation and TWR services closures due to staff shortages, beyond that which is available here: https://www.casa.gov.au/freedom-information-foi-oar-spreadsheet-logs

On 14 July 2023, following consultation with you, you agreed to modify the scope of your request to the following:

Please **revise section 4 of our request** regarding communications/correspondence to now be between your government department and:

- Minister/Ministers Office,
- CEO Airservices Australia, Jason Harfield
- Chief People and Culture Officer at Airservices Australia: Sarah Davis/Lucinda Gemmell
- CEO/DAS CASA
- CASA Executive Manager National Operations and Standards: Chris Monahan
- CASA Executive Manager Regulatory Oversight: Rob Walker

The time period requested for Part 4 here may also be amended to: For the period between 1 January 2021 and the present.

We note the particular specificity of the terminology used in your searches for Part 4 and we are accepting of you instead only utilising the following terminology to search:

- Air Traffic Workforce
- Air Traffic shortage
- Air traffic control disruptions
- Airspace closure
- TIBA
- Service variation(s)

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

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I have decided to:

- grant access in full to relevant information in 5 documents
- 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 the parts of documents relevant to your request are set out below.

4.1 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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)' contains 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 the parts of the documents marked 's47E' are conditionally exempt from disclosure under section 47E of the FOI Act.

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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 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:

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... 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 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

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- 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.
- 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:

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- could reasonably be expected to have a substantial adverse effect on the proper conduct of the operations of an agency
- 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.

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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. 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 duplicates, draft versions of final documents and personal identifiers of public servants. When your request was acknowledged, we notified you that duplicates, draft versions of final documents and 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.

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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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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.

Yours sincerely

s22(1)(a)(ii)

Naa Opoku
Assistant Secretary
Safety and Future Technology Branch
International Aviation, Technology & Services Division

Date: 28 August 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-315

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	02/11/2022	FW: TWU Pilot's Division Flight Safety Committee meeting updated	1	Partial access granted	s22 s47F
2.	10/2022	Attachment TWU Flight safety report October 2022 (Attachment to Document no.1)	2	Access granted in full	N/A
3.	27/03/2023	Email chain re: Request for 360 support	3	Partial access granted	s22 s47F
4.	27/09/2023	Email chain re: RE: Australian article - ATC	3	Partial access granted	s22 s47F s47E
5.	02/03/2023	FW: Joint Letter - Airservices Australia	2	Partial access granted	s22 s47F s47E
6.	01/03/2023	Attachment: 230301 AAA_A4ANZ Joint Letter – Airservices (Attachment to Document no.7)	2	Partial access granted	s47F
7.	Undated	Attachment: ATC Service Variations WE 31Jan (Attachment to Document no.7)	1	Access granted in full	n/a
8.	Undated	Attachment: ATC Service Variations WE 7Feb (Attachment to Document no.7)	1	Access granted in full	n/a
9.	16/02/2023	SUMMARY - 2022-23 Airservices Corporate Plan – Quarter 1 Progress Report	3	Partial access granted	s22 s47F s47E
10.	01/12/2022	Attachment: 2022 12 01 Chairman to Minister Q1 2022-23 Report (Attachment to Document no.11)	1	Partial access granted	s47F
11.	01/12/2022	Attachment: 2022 12 01 Airservices Quarterly Report Q1 FY2023 (Attachment to Document no.11)	22	Access granted to relevant information	s22
12.	09/03/2023	Airservices Australia Air Traffic Control (ATC) workforce shortages and impacts	2	Access granted to relevant information	s22
13.	Undated	Attachment – Unsigned MC23-038617 ATC (Attachment to Document no.15 – incoming corro)	9	Partial access granted	s22 s47F

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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

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.

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Australian Government

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

Our reference: FOI 23-300

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 22 June 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) a copy of correspondence from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts to LEK Consulting related to the engagement of LEK to undertake work to provide advice in relation to aviation policy development, including scenario analysis and input into the Aviation green paper and Aviation white paper process;

b) a copy of any analysis of scenarios for the aviation sector provided by LEK Consulting to the Department;

c) a copy of any reports or draft reports provided to the Department by LEK Consulting in relation to consultations undertaken by LEK Consulting on behalf of the Government in relation to aviation policy development.

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 partial access to 3 documents
- refuse access to 12 documents

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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 parts of the documents marked 's.45' consists 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 to the affected third party in this instance would involve:
    - financial loss
    - public criticism
    - harassment

For the reasons outlined above, I have decided that the parts of the documents marked 's.45' are exempt from disclosure under section 45 of the FOI Act.

4.2 Section 47 - Documents disclosing trade secrets

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

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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.

For the reasons outlined above, I decided that the documents marked 's47' in the schedule are exempt from disclosure under section 47(1)(a) 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.

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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 's.47C' 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.

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

4.4 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 parts of the documents marked 's.47G' contain business affairs information that is relevant to persons in respect of their business or professional affairs and to the business, commercial or financial affairs of an organisation or undertaking.

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 persons in respect of their business or professional affairs as well as 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.

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

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 's.47G' 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.

4.5 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.

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

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 negative 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 similar information; and
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

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 documents. 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; 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.

4.6 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. 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.

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

5 Material taken into consideration

In making my decision, I had regard to:

- 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.

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.

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)

Brendon Buckley
Assistant Secretary
Aviation White Paper Taskforce
Domestic Aviation & Reform Division

Date: 23 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-300

Doc No.	Date of Document	Description of document	No. of Pages	Decision on access	Provision of the FOI Act
1.	31/10/2022	Department to L.E.K. Consulting - Request for Quote	12	Partial access granted	s.22(1)(a)(ii) s.45 s.47G(1)(a)
2.	23/11/2022	Department to L.E.K. Consulting - Acceptance of Tender	10	Partial access granted	s.22(1)(a)(ii) s45 s.47G(1)(a)
3.	2/12/2022	Department to L.E.K. Consulting - Commencement Date Correction	1	Partial access granted	s.22(1)(a)(ii) s45
4.	23/12/2022	Draft Early Findings Report	45	Access refused in full	s.47 s.47C
5.	13/01/2023	Early Findings Report	46	Access refused in full	s.47 s.47C
6.	17/02/2023	Draft Scenario Analysis Report	117	Access refused in full	s.47 s.47C
7.	3/03/2023	Draft Scenario Analysis Report	132	Access refused in full	s.47 s.47C
8.	10/03/2023	Preliminary Report Presentation	17	Access refused in full	s.47 s.47C
9.	10/03/2023	Draft Scenario Analysis Report	133	Access refused in full	s.47 s.47C
10.	17/03/2023	Preliminary Report Presentation	42	Access refused in full	s.47 s.47C
11.	20/03/2023	Preliminary Report Presentation	42	Access refused in full	s.47 s.47C
12.	27/03/2023	Draft Scenario Analysis Report	136	Access refused in full	s.47 s.47C
13.	31/03/2023	Draft Scenario Analysis Report	136	Access refused in full	s.47 s.47C
14.	31/03/2023	Consultation Report	167	Access refused in full	s.47 s.47C
15.	25/05/2023	Preliminary Final Scenario Analysis Report	163	Access refused in full	s.47 s.47C

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

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.

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 23-297

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 15 June 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 District Council of Cleve were a successful recipient of an application for a Building Better Regions (Round 5) Fund Grant for a project to construct new accommodation facilities for 35 students at the Cleve Area School.*
>
> *I seek access to:*
>
> - *The Council's grant application*
> - *The Department's grant assessment record*
> - *All emails/correspondence between the Department and the Council in the period between when the grant was announced and the execution of any deed/agreement*
> - *Any due diligence that has been carried out by the Department in respect of execution of the 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.

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

3 Background

Please note that the Department was the Commonwealth policy entity for the Building Better Regions Fund Round 5 and the administering entity was the Department of Industry, Science and Resources. Therefore, further documents relating to this request would most likely be held within the Department of Industry, Science and Resources.

4 Decision

I have identified one document 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 one document.

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

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemption applies to the parts of document 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 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

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

(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

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

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
- 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.

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' 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.

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

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- 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 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.

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

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.

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.

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)

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

Date: 24 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-297

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	01/04/2021	Application BRFIPV000192	20	Partial access granted	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

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.

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 24-064

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 18 August 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 correspondence sent to Qatar Airways related to the number of passengers that the airline was allowed to carry into Melbourne Airport on 25 November 2020.

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 your request. This document was in the possession of the Department when your request was received.

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 an exemption applies to the parts of document relevant to your request are set out below.

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

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

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

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 is 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 the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

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

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.

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

- 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.

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

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

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.

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.

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Assistant Secretary
International Aviation Branch
International Aviation, Technology and Services Division

Date: 25 August 2023

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

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

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.

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Australian Government

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

Our reference: FOI 24-007

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 10 July 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 documents relating to social media safety training provided by Meta to Australian MPs, advocacy groups and not-for-profit organisations. Please provide any department briefings, correspondence, and policy documents related to this information from the period of 10 July 2022 to 9 July 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.

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

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 partial 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 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.

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

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

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

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 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 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

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- 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 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:

(e) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

(f) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information

(g) 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

(h) 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.

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

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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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

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.

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)
A/g Assistant Secretary
Platforms and News Branch
Online Safety, Media and Platforms Division

Date: 21 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI - 007

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	21/10/2022	Title: "MB22-000743 – Meta Meeting" Subject: Meeting brief for Minister Rowland, meeting with Meta representatives.	9	Partial access granted	s22 s47F
2.	3/11/2022	Title: "Input to 14 November Meta-Minister meeting" Subject: Provides background information on Meta and its online safety initiatives	3	Partial access granted	s22 s47F
3.	31/10/2022	Title: "FW: CrowdTangle and meeting with Minister Rowald" Subject: Background information about CrowdTangle to inform MB22-000743	3	Partial access granted	s22 s47F
4.	31/10/2022	Title: RE: CrowdTangle and meeting with Minister Rowald" Subject: Background information about CrowdTangle to inform MB22-000743	3	Partial access granted	s22 s47F
5.	30/09/2022	Title: "Thank you - and follow up" Subject: Meta follow up email to meeting with the Department	1	Partial access granted	s22 s47F

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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

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.

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 23-293

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 12 June 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:

> Copy of all briefings (including ministerial briefings), talking points, back pocket briefs and the like relating to or mentioning Norfolk Island and prepared for or in relation to the 2023/2024 budget estimates.

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

*Section 4 – **'document'** – subsection (d)* of the FOI Act defines material maintained for reference purposes that is otherwise publicly available is not a document for the purposes of the Act.

I have identified 3 documents in possession of the Department, captured by the scope of your request which are otherwise excluded from the operation of the FOI Act under *Section 4 – **'document'** – subsection (d)*.

While the documents identified are not subject to the operation of the FOI Act, a hyperlink to the publicly available documents will be provided in conjunction with this decision.

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

4 Decision

I have identified 6 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 5 documents
- grant partial 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.**

5 Finding of facts and reasons for decision

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

5.1 Section 47B - Documents affecting Commonwealth-State relations

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

(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

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6.35 The potential damage need not be quantified, www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-6-conditional-exemptions but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that release of the parts of the document marked 's.47B(b)' would divulge information communicated in confidence by the Government of a State, to the Government of 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 parts of the document marked 's.47B(b)' contains 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 governments and considered any concerns raised by the relevant State.

For the reasons outlined above, I decided that the parts of the document marked 's47B' is 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 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.

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

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 prejudice or impair the future flow of information from state and territory governments to the Commonwealth
- would interrupt or create difficulty in negotiations or discussions that are underway.

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.

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

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.

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.

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 a State government 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.

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.

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

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)

Aaron O'Neill
Assistant Secretary
Norfolk Island Branch
Territories Division

Date: 18 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-293

Doc No.	Date of document	Description of document	No. of Pages	Decision on access	Provision of FOI Act
1.	11 April 2023	**SB23-000612** Norfolk Island Key Issues	6	Access granted in full to relevant information	s.22(1)(a)(ii)
2.	11 April 2023	**SB23-000613** Norfolk Island Regional Council	4	Access granted in full to relevant information	s.22(1)(a)(ii)
3.	May 2023	**BPB03** Norfolk Island Water Quality	2	Access granted in full to relevant information	s.22(1)(a)(ii)
4.	May 2023	**BPB04** Norfolk Island Service Delivery	2	Partial access granted	s.22(1)(a)(ii) s.47B(b)
5.	May 2023	**BPB05** Norfolk Island freight security	3	Access granted in full to relevant information	s.22(1)(a)(ii)
6.	May 2023	**BPB06** Norfolk Island Governance	2	Access granted in full to relevant information	s.22(1)(a)(ii)

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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

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.

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 23-279

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 16 May 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:

> *"Pursuant to my interest in the Hobart Airport Master Plan 2022 approved by Minister King, I hereby formally request the disclosure of all relevant public submissions related to this plan. Additionally, I am seeking access to the detailed briefing notes presented to the Minister, with particular attention to public grievances, notably those germane to the effects of aircraft noise and environmental disturbances beyond the immediate confines of the airport property"*

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 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 partial 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.**

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

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' 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:

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... 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 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.

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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 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

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- 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 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:

(e) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

(f) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information

(g) 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

(h) 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.

In addition, as I have 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.

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

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.

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.

Further information

Yours sincerely

Phil McClure
Assistant Secretary
Airports Branch
Domestic Aviation & Reform Division

Date: 14 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-279

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	06 March 2023	Minister Brief - Hobart Airport draft Master Plan 2022, with Attachments	16	Access granted in full to relevant information	s22
2.	20 December 2022	Hobart Airport 2022 Master Plan	23	Access granted in part	s22 s47F
		Attachment A – Email	2	Access granted in part	s22 s47F
3.	26 October 2023	Email correspondence	2	Access granted in part	s22 s47F
4.	06 March 2023	Assessment – Hobart Airport draft Master Plan 2022	7	Access granted in full	
5.	06 March 2023	Assessment – Hobart Airport draft Master Plan 2022	23	Access granted in full	

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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

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.

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Australian Government

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

Our reference: FOI 24-019

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 28 June 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 correspondence sent to Qatar Airways informing of the timetable for the Northern Winter 2020-2021 period.*

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.**

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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.

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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 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

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- 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

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- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the 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:

(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.

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 have 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

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- 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.

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, the Department may also publish the released material on its Disclosure Log. The Department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the Department's Disclosure Log can be found here: 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)

s22(1)(a)(ii)
A/g Assistant Secretary
International Aviation Branch
International aviation, Technology and Services Division

Date: 17 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 2

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	15 October 2020	Email: Subject: Qatar Airways NW20-21 timetable approval (FREIGHT ONLY)	2	Partial access granted	s22 s47F
2.	21 October 2020	Email: Subject: Qatar Airways Northern Winter 2020-21 timetable approval – notice of condition 25 Oct – 21 Nov	6	Partial access granted	s22 s47F
3.	23 October 2020	Email: Subject: Qatar Airways Northern Winter 2020-21 timetable approval – Decision	6	Partial access granted	s22 s47F

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 24-008

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 11 July 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) a copy of the final report of the review of the Strategic Fleet Taskforce;

b) a copy of any correspondence sent from the Strategic Fleet Taskforce enclosing a copy of the final report, between 1 June 2023 to 5 July 2023, including via email or via digital communications platforms including text messages or WhatsApp;

c) a copy of any correspondence sent from the Strategic Fleet Project Team Taskforce enclosing a copy of the final report of the Strategic Fleet Taskforce, between 1 June 2023 to 5 July 2023; and

d) a copy of any correspondence sent from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts enclosing a copy of the final report of the Strategic Fleet Taskforce, between 1 June 2023 to 5 July 2023.

Not included in the above request are: attachments to correspondence listed under (b) through (d); duplicates of documents; the names of non-SES Departmental staff; or staff telephone numbers. However, the domain names of email addresses is requested to be provided where staff names have been deleted.

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.

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3 Decision

I have identified 10 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 6 documents
- grant partial access to 2 documents
- refuse access to 2 documents in full

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 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 contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the

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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 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.

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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 e
- 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

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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 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:

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- 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.

4.4 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. 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.

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

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.

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.

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)

Andrew Johnson
Assistant Secretary
Strategic Fleet
Surface Transport Emissions and Policy Division

Date: 15 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-008

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	June 2023	Final Report – Strategic Fleet Taskforce	129	Access refused in full	s.47C
2.	30 June 2023	Email to Minister regarding Strategic Fleet Taskforce	1	Partial access granted	s.22(1)(a)(ii) s.47F
3.	30 June 2023	Letter to Minister from the Chair of the Strategic Fleet Taskforce	2	Access refused in full	s.47C
4.	30 June 2023	Ministerial Submission regarding Strategic Fleet Taskforce	3	Partial access granted	s.22(1)(a)(ii) s.47C
5.	30 June 2023	Email to Strategic Fleet Taskforce members providing final report	1	Access granted to relevant information	s.22(1)(a)(ii) s.47F
6.	3 July 2023	Email providing final report to key Commonwealth Agency stakeholders	1	Access granted to relevant information	s.22(1)(a)(ii)
7.	3 July 2023	Email providing final report to key Commonwealth Agency stakeholders	1	Access granted to relevant information	s.22(1)(a)(ii)
8.	3 July 2023	Email providing final report to key Commonwealth Agency stakeholders	1	Access granted to relevant information	s.22(1)(a)(ii)
9.	3 July 2023	Email providing final report to key Commonwealth Agency stakeholders	2	Access granted to relevant information	s.22(1)(a)(ii)
10.	30 June 2023	Email providing contact detail and drafts for the Strategic Fleet Taskforce	1	Access granted to relevant information	s.22(1)(a)(ii)

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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

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.

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Australian Government

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

Our reference: FOI 24-016

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 20 July 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 between 22 May 2023 and 17 July 2023 which are:
> a) a copy of the Aviation Green Paper final report sent from the Department to the Minister;
> b) a copy of any briefings sent from the Department to the Minister regarding the Aviation Green Paper, noting any personal or financial details contained in such briefings related to any consultants engaged to assist with drafting the green paper would be considered outside the scope of the request;
> c) if the document referred to under (a) does not exist, a copy of any draft Aviation Green Paper reports sent from the Department to the Minister.

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

Under section 4 of the FOI Act, the definition of a document does not include material maintained for reference purposes that is otherwise publicly available. The Terms of Reference for the Aviation Green Paper is publicly available and, as a result, this document cannot be requested under the FOI Act. However, in order to assist you, I can advise that the Terms of Reference for the Aviation Green Paper can be found at the below link on the Department's website:

https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper/terms-of-reference

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4 Decision

With regard to the remaining parts of your request, I have identified four documents that are relevant. These documents were in the possession of the Department when your request was received. I have decided to refuse access to four 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 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)(d) of the FOI Act provides that a document is an exempt document if it is a draft of a document to which section 34(1)(a) or (c) above applies.

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 submission for consideration by the Cabinet, and is or was proposed by a Minister to be submitted for consideration by the Cabinet.

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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.

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 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.

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.

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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 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.

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

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

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.

8 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.

Yours sincerely

s22(1)(a)(ii)

Kai Everest
Assistant Secretary
Aviation White Paper and Reform Branch
Domestic Aviation and Reform Division

Date: 10 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 24-016

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	23 July 2023	Aviation Green Paper	186	Access refused in full	S 34(1)(d)
2.	3 July 2023	MS23-003666 – Draft Aviation Green Paper	4	Access refused in full	S 34(1)(d)
3.	3 July 2023	Attachment A: MS23-003666 – Draft Aviation Green Paper Cabinet Submission	14	Access refused in full	S 34(1)(d)
4.	3 July 2023	Attachment B: MS23-003666 – Draft Aviation Green Paper	165	Access refused in full	S 47C

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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

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.

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Australian Government

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

Our reference: FOI 23-305

s22(1)(a)(ii)

Dear s22(1)(a)

Decision on your Freedom of Information Request

I refer to your request of 26 June 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:

> Submissions, briefing or other correspondence provided to the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, that relate to implementation of recommendations of the review of Infrastructure Australia undertaken by Nicole Lockwood and Mike Mrdak to recommend a new way forward, and/or Infrastructure Australia Board appointments.

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 22 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 one document
- grant partial access to five documents
- refuse access to 16 documents

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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 the exemption applies to the documents and parts of the 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 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.

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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 s11A(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

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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 s47F 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 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 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.

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4.3 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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)' contains 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 the 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.

4.4 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

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- 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 early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a adverse 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

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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 have 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 you submitted your request, you indicated that you were not seeking access to the mobile numbers or full emails addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent. As such, this information has been deleted under section 22(1)(a)(ii) of the FOI Act as irrelevant to your request.

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.

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.

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Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

Andreas Bleich
Assistant Secretary
Infrastructure Group Assurance and Advisory Branch

Date: 16 August 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-305

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	12/05/2023	Senate Estimates brief SB23-000681 Subject: Independent Review of Infrastructure Australia (IA) – Australian Government response	5	Access granted in part	s22 s47C s47F
		Attachment A – Australian Government Response Summary	8	Access granted in full	
		Attachment B - Subject: Infrastructure Australia Board Members	3	Access granted in part	s47F
2.	11/03/2023	Ministerial Submission MS23-003113 Subject: Implementing the Australian Government's response to the independent review of Infrastructure Australia (IA)	3	Access granted in part	s22 s47C
		Attachment A: *Infrastructure Australia Amendment (Independent Review) Bill 2023*	24	Access granted in full	
		Attachment B: Explanatory Memorandum	12	Access granted in full	
		Attachment C: Second Reading Speech	2	Access granted in full	
		Attachment D:	5	Access refused in full	s47C
		Attachment E: Australian Government Response to the Independent Review of IA	10	Access granted in full	
		Attachment F:	2	Access refused in full	s47C
3.	20/03/2023	IA Bill 2023 Q&A	6	Access refused in full	s47C
4.	20/03/2023	Infrastructure Australia Amendment Bill Clause by Clause Guide	7	Access granted in full	
5.	20/03/2023	Infrastructure Australia Amendment Bill summary talking points	2	Partial access granted	s47C
6.	20/03/2023	IA Review Recs – Implementation summary table	7	Partial access granted	s47C s47E(d)
7.	09/05/2023	Ministerial Submission MS23-003379 Subject: Infrastructure Australia Statement of Expectations addendum	2	Partial access granted	s47C s22
		Attachment A Letter to Acting IA Chair	1	Access granted in part	s47F
		Attachment B Statement of Expectations issued to IA	1	Access granted in full	
8.	17/03/2023	weekly report	1	Access refused in full	s47C
9.	15/05/2023	weekly report	1	Access refused in full	s47C
10.	12/12/2022	weekly report	3	Access refused in full	s47C
11.	02/06/2023	weekly report	22	Access refused in full	s47C
12.	23/01/2023	weekly report	11	Access refused in full	s47C
13.	16/01/2023	weekly report	10	Access refused in full	s47C

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Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
14.	10/02/2023	weekly report	12	Access refused in full	s47C
15.	06/02/2023	weekly report	13	Access refused in full	s47C
16.	03/03/2023	weekly report	13	Access refused in full	s47C
17.	28/11/2022	weekly report	8	Access refused in full	s47C
18.	21/11/2022	weekly report	8	Access refused in full	s47C
19.	14/11/2022	weekly report	8	Access refused in full	s47C
20.	24/10/2022	weekly report	7	Access refused in full	s47C
21.	17/10/2022	weekly report	7	Access refused in full	s47C
22.	10/10/2022	weekly report	7	Access refused in full	s47C

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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

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.

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Australian Government

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

Our reference: FOI 23-280

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 18 May 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 all briefs, emails and attached documents, specifically between the department and staff in the Office of the Minister for Communications (including the ministerial office departmental liaison officer), in relation to the decision to allocate funding to 54 target locations under the Improving Mobile Coverage Round (IMCR) of the Mobile Black Spot Program – announced in the Minister's media statement of 2 February 2023 on the opening of the IMCR round to '54 target locations'. This request includes copies of briefs that have been signed or notated by the Minister on the program during this period. Duplicate unsigned copies of the same briefs are not required.
>
> The time frame is from the search period is 1 June 2022 to 30 March 2023.

1.1 Clarification/Modification of scope of request

On 16 June 2023, following consultation with you, you agreed to modify the scope of your request to the following:

1. *Ministerial Briefs signed by the Minister for Communications formalising round 6 (Improving Mobile Coverage Round) under the Mobile Black Spot Program, including any attachments, excluding Meeting/Event Briefs.*
2. *Correspondence between the Department and the Office of the Minister for Communication's relevant key advisor/s or Chief of Staff detailing the operation, management, or delivery of round 6 (Improving Mobile Coverage Round) under the Mobile Black Spot Program, excluding media related documents.*

These documents will have been created, finalised, or sent/received between the period 1 June 2022 to 30 March 2023.

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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 23 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 18 documents
- grant partial 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 parts of documents relevant to your request are set out below.

4.1 Section 34 - Cabinet documents

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.

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I have had regard to the content 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 documents marked 's34' are exempt under section 34 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 parts of document numbered 2 within the schedule and that are 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, exposure to ridicule, or public criticism to the affected third party.

For the reasons outlined above, I have decided that parts of the documents marked 's45' are exempt from disclosure under section 45 of the FOI Act.

4.3 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.

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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/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-6-conditional-exemptions but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that release of the information would reasonably be likely to:

- adversely affect the continued level of trust or cooperation in existing inter-office relationships; and
- impair and prejudice the flow of information to and from the Commonwealth in future similar matters.

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 documents marked 's47B' are conditionally exempt from disclosure under section 47B of the FOI Act.

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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 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 documents set out the weighing up and evaluation of competing arguments or the factors of such process, 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.

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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.

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.

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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
- could impair and prejudice the flow of information to and from the Commonwealth from state or territory governments
- 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.

4.6 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. 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.

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

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.

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.

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)

Karly Pidgeon
Assistant Secretary
Regional Mobile Infrastructure Programs Branch
Communications Services and Consumer Division

Date: 15 August 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-280

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	6 October 2022	Ministerial Submission signed by Minister for Communications	52	Partial Access Granted	s.22(1)(a)(ii) s.34(2) s.34(3) s.47B(a) s.47C
2.	24 January 2023	Ministerial Submission signed by Minister for Communications	51	Partial Access Granted	s.22(1)(a)(ii) s.45 s.47C
3.	10 August 2022	Correspondence regarding indicative project schedules	7	Access granted to relevant information	s.22(1)(a)(ii)
4.	15 August 2022	Correspondence regarding Commonwealth and state matter	2	Partial Access Granted	s.22(1)(a)(ii) s.47B(a) s.47C
5.	23 September 2023	Correspondence regarding IMCR Draft Grant Opportunity Guidelines and state contacts	42	Access granted to relevant information	s.22(1)(a)(ii)
6.	7 October 2023	Correspondence regarding budget measures	1	Partial Access Granted	s.22(1)(a)(ii) s.47C
7.	27 October 2023	Correspondence regarding correction of published link	2	Access granted to relevant information	s.22(1)(a)(ii)
8.	2 November 2023	Correspondence regarding update on IMCR Draft Grant Opportunity Guidelines	2	Access granted to relevant information	s.22(1)(a)(ii)
9.	10 November 2023	Correspondence regarding IMCR internet update timing	2	Access granted to relevant information	s.22(1)(a)(ii)
10.	17 November 2023	Correspondence regarding response to query on IMCR in McEwen	6	Access granted to relevant information	s.22(1)(a)(ii)
11.	24 January 2023	Correspondence regarding update of IMCR Guidelines for Ministerial sign off	1	Access granted to relevant information	s.22(1)(a)(ii)
12.	24 January 2023	Correspondence regarding corrections to formatting in Draft IMCR Guidelines	4	Access granted to relevant information	s.22(1)(a)(ii)
13.	24 January 2023	Correspondence regarding draft media releases for IMCR	5	Access granted to relevant information	s.22(1)(a)(ii)
14.	1 February 2023	Correspondence regarding live release of IMCR Guidelines	2	Partial Access Granted	s.22(1)(a)(ii) s.34(3) s.47B(a)

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Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
15.	2 February 2023	Correspondence regarding live release of IMCR Guidelines	12	Access granted to relevant information	s.22(1)(a)(ii)
16.	2 February 2023	Correspondence regarding query into channels of registering further communication black spots	7	Access granted to relevant information	s.22(1)(a)(ii)
17.	24 February 2023	Correspondence regarding template letter to resolve confusions	2	Access granted to relevant information	s.22(1)(a)(ii)
18.	24 February 2023	Correspondence regarding template letter to resolve confusions	2	Access granted to relevant information	s.22(1)(a)(ii)
19.	1 March 2023	Correspondence regarding draft template letter to resolve confusions	4	Access granted to relevant information	s.22(1)(a)(ii)
20.	10 March 2023	Correspondence regarding high level timelines of Regional Communications programs	2	Access granted to relevant information	s.22(1)(a)(ii)
21.	11 November 2022	Correspondence regarding live publication of Draft IMCR Guidelines consultations	4	Access granted to relevant information	s.22(1)(a)(ii)
22.	1 February 2023	Correspondence regarding live publication of IMCR Grant Opportunity	11	Access granted to relevant information	s.22(1)(a)(ii)
23.	1 February 2023	Correspondence regarding live publication of IMCR Grant Opportunity	1	Access granted to relevant information	s.22(1)(a)(ii)

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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

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.

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Australian Government

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

Our reference: FOI 23-261

s22(1)(a)(ii)

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 2 May 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. the decision of the Minister to approve the Melbourne Airport 2022 Master Plan (Master Plan) under section 81 of the Airports Act 1996 (Cth), including all submissions, records, reports and materials that the Minister relied on in making the decision and the reasons for making the decision;
2. the submissions made by the Melbourne Airport to the Minister for approval of the proposed Major Development Plan for the Melbourne Airport (Major Development Plan), and all supporting records, reports and materials including:
    a. the draft Major Development Plan;
    b. Australian Noise Exposure Forecast for the areas surrounding the Melbourne Airport, and the effect that the proposed development of a new third runway and the airport elevated road and forecourt (Development) would be likely to have on noise exposure levels;
    c. proposed flight paths;
    d. plans for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels;
    e. Melbourne Airport's assessment of environmental issues that might reasonably be expected to be associated with the implementation of the Master Plan and the Development;
    f. Melbourne Airport's plans for dealing with the environmental issues in respect to the Development, including plans for ameliorating or preventing environmental impacts;
    g. a plan for a ground transport systems;

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h. a plan for the Development;

i. an environment strategy that details matters such as:

   i. Melbourne Airport's objectives for the environmental management of the airport and the Development;

   ii. the sources of environmental impact associated with Melbourne Airport's operations and the Development;

   iii. the studies, reviews and monitoring to be carried out by Melbourne Airport in connection with the environmental impact associated with its operations and the Development;

   iv. the specific measures to be carried out by Melbourne Airport for the purposes of preventing, controlling or reducing the environmental impact associated with Melbourne Airport's operations and the Development;

j. safety considerations in respect to local residents in developing the proposed new third runway in a North/South orientation compared to an East/West orientation;

k. commercial considerations of the Melbourne Airport in in developing the proposed new third runway in a North/South orientation compared to an East/West orientation;

l. Melbourne Airport's objectives for the Development;

m. a detailed outline of the Development;

n. submissions made by members of the public and details of the public consultation process undertaken by the Melbourne Airport in respect of the Master Plan and proposed Major Development Plan, including the Development;

o. whether or not the Development is consistent with the airport lease;

p. whether or not the Development is consistent with the Master Plan approved by the Minister; and

q. the extent of any inconsistencies in the Master Plan and the Major Development Plan with planning schemes in force under a law of the State of Victoria in which Melbourne Airport is located;

3. a copy of Melbourne Airport's lease;

4. plans evidencing Melbourne Airport's initial proposal to develop a new third runway in an East/West orientation; and

5. documents evidencing Melbourne Airport's reasons for altering the proposed third runway from an east/west orientation to a north/south orientation.

1.1 Clarification/Modification of scope of request

On 25 May 2023, following consultation with you, you agreed to modify the scope of your request to the following:

1. The Australian Noise Exposure Forecast for the areas surrounding the Melbourne Airport;

2. Melbourne Airport's plans for managing aircraft noise intrusion;

3. Melbourne Airport's assessment of environmental issues that are expected to be associated with the implementation of the Melbourne Airport 2022 Master Plan;

4. Melbourne Airport's plans for dealing with the environmental issues that are expected to be associated with the implementation of the Melbourne Airport 2022 Master Plan, including plans for ameliorating or preventing environmental impacts;

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5. Any environment strategy that details:
    a. Melbourne Airport's objectives for the environment management of the airport and the construction of the proposed new third runway;
    b. The areas within the airport site which Melbourne Airport identifies as environmentally significant;
    c. The sources of environmental impact associated with airport operations and the construction of the proposed third runway;
    d. Studies, review and monitoring to be carried out by Melbourne Airport in connection with the environmental impact associated with airport operations and the construction of the proposed new third runway; and
    e. The specific measures to be carried out by Melbourne Airport for the purposes of preventing, controlling or reducing the environmental impact associated with airport operations and the construction of the proposed new third runway.
6. The Section 71 and Section 81 Assessments prepared by the department to support the Minister's decision regarding the Melbourne Airport 2022 Master Plan, as well as the letter from the Infrastructure Minister to the CEO, Melbourne Airport, confirming the Minister's approval of the Master Plan;
7. Safety consideration in respect to local residents in developing the proposed new third runway in a North/South orientation compared to an East/West orientation;
8. The 2018 Master Plan.

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

*Section 4 – '**document**' – subsection (d)* of the FOI Act defines material maintained for reference purposes that is otherwise publicly available is not a document for the purposes of the Act.

I have identified one document in possession of the Department, captured by the scope of your request which is otherwise excluded from the operation of the FOI Act under *Section 4 – '**document**' – subsection (d)*.

While the document identified is not subject to the operation of the FOI Act, a hyperlink to the publicly available document will be provided in conjunction with this decision.

4 Decision

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

In relation to these nine documents, I have decided to:

- grant access in full to relevant information in seven documents; and
- grant partial 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.**

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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 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 selecting 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.

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.

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I am satisfied that factual information contained within the documents is embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I have 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.

5.2 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

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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.

5.3 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 have 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 have 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.

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

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.

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.

Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

Phil McClure
Assistant Secretary
Airports Branch
Domestic Aviation and Reform Division

Date: 7 August 2023

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

SCHEDULE OF DOCUMENTS FOI 23-261

Doc No.	Date of document	Description of document	No. of Pages	Decision on access	Provision of FOI Act
1	28 January 2022	Major Development Plan - Melbourne Airport's Third Runway, Part A, Chapters A1-A8.	107	Access granted in full	N/A
2	28 January 2022	Major Development Plan - Melbourne Airport's Third Runway, Part B, Chapters B1-B13.	381	Access granted in full	N/A
3	28 January 2022	Major Development Plan - Melbourne Airport's Third Runway, Part C, Chapters C1-C5.	278	Access granted in full	N/A
4	28 January 2022	Major Development Plan - Melbourne Airport's Third Runway, Part D, Chapters D1-D4.	85	Access granted in full	N/A
5	28 January 2022	Major Development Plan - Melbourne Airport's Third Runway, Part E, Chapters E1-E6.	54	Access granted in full	N/A
6	2022	Melbourne Airport draft Master Plan 2022 - Airports Act 1996 assessments - Sections 71-80 criteria.	30	Partial access granted	s.47C
7	2022	Melbourne Airport draft Master Plan 2022 - Airports Act 1996 assessments - Section 81 criteria.	9	Partial access granted	s.47C
8	4 November 2022	Approval letter from Minister King to CEO Mrs Argus – Section 81 of the Airports Act 1996	2	Access granted to relevant information	s.22(1)(a)(ii)
9	24 April 2019	Melbourne Airport Master Plan 2018	410	Access granted in full	N/A

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

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

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.

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 24-005

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 6 June 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:

> information relating to the cancelation of the "Heathcote Road, The Avenue to Princes Highway- Planning" project which had received $17.5m as a part of the Infrastructure Investment Program. Specifically, the reasons as to why the program was cancelled at the October 2022-23 Budget. In addition, I am requesting all information relating to this matter to be provided.

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 refuse access to those 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.

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

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

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)(a)' 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.

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(1)(a)' in the schedule is 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.

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

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.

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 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.

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

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 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.

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

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.

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.

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Assistant Secretary
NSW and ACT Infrastructure and Program Governance and Assurance Branch
Land Transport Infrastructure Division

Date: 31 July 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 2

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	7 September 2022	Project List	3	Access refused in full	s47C
2.	16 September 2022	Project List	19	Access refused in full	s47C
3.	15 October 2022	Letter to Prime Minister	9	Access refused in full	s34(1)(a)
4.	17 October 2022	Presentation	2	Access refused in full	s47C

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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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 23-057

s22(1)(a)(ii)

Dear s22(1)(a)

Decision on your Freedom of Information Request

I refer to your request of 25 October 2022, 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 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.

2 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

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

3 Scope of your request

You requested access to:

> *Documents that relate to the independent costings assessment undertaken for the Bunbury Outer ring road project prior to the media release of an extra $320 million dollars of Federal funding announced in March 2022*

3.1 Clarification/Modification of scope of request

On 1 November 2022, following consultation with you, you agreed to modify the scope of your request to the following:

> *A final copy of the Independent Cost Assessment for the Bunbury Outer Ring Road project*

4 Decision

I have identified one document that is 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 this document.

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

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the relevant document are set out below.

5.1 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:

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

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 release of this document would prejudice the future flow of information from State to Commonwealth and adversely affect the development of future Commonwealth-State projects.

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 marked 's47B(b)' in the schedule contains 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 and/or Territory government, and I considered any concerns raised by the relevant State and/or Territory.

For the reasons outlined above, I decided that the document marked 's47B' in the schedule is 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.

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

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 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.

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 embedded in or intertwined with the deliberative content such that it is impractical to excise.

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.

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

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, the Department 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 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

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

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 exemption 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 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.

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.

Yours sincerely

s22(1)(a)(ii)

Maxine Ewens
Authorised Decision Maker
Assistant Secretary
QLD, NT, WA Branch
Infrastructure Investment Division

Date: 10/01/2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	143	15/03/2202	Bunbury Outer Ring Road Cost Estimate Review	Access refused	s47B (2) s47C

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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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 23-063

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 28 October 2022, 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 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.

2 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

3 Scope of your request

You requested access to:

> *a copy of the Department of Infrastructure, Transport, Regional Development and Communications estimates briefing pack for October 2022*

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

4 Decision

I have identified 177 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 92 documents
- grant partial access to 85 documents

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

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the parts of documents are set out below.

5.1 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).

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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 a document 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 the parts of the documents marked 's33' are exempt from disclosure under section 33(a)(i) of the FOI Act.

5.2 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

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- 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 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 there is a contractual obligation of confidence between the Department and an affected third party
- 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.

For the reasons outlined above, I have decided that the parts of the documents marked 's45' are exempt from disclosure under section 45 of the FOI Act.

5.3 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

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- 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.

I have taken into consideration the exemption submissions made during the consultation process.

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.

5.4 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

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- 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 the information in the documents would satisfy the circumstances.

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 parts of the documents marked 's47B(b)' 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 and/or Territory governments, and I took into account any concerns raised by the relevant State and/or Territory.

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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.

5.5 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.

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5.6 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of 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 parts of the document marked 's47E(a)' would prejudice the effectiveness of procedures for the conduct of audits 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 audits.

Examples of testing methods considered by the AAT include:

- safety audits and testing regimes[1]
- licensing board examinations
- risk assessment matrices[2]
- compliance audit indicators and any comparative weighting of the indicators
- accident investigation techniques[3]
- tests or examinations leading to qualifications[4]
- potential fraud case assessment and analysis tools[5]

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 audit being conducted by the Department is an audit that meets these characteristics.

[1] See Vasta and McKinnon and Civil Aviation Safety Authority [2010] AATA 499
[2] Lobo and Secretary, Department of Education, Science and Training [2007] AATA 1891
[3] Vasta and McKinnon and Civil Aviation Safety Authority [2010] AATA 499
[4] Re James and Ors and Australian National University (1984) ALD 687
[5] Splann and Centrelink [2009] AATA 320

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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 cold 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 the 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.

5.7 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 a number of individuals.

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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

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- 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

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.

The documents contain the personal information 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 the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety 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.

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5.8 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 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.

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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).

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.

5.9 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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

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- 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 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 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 effectiveness of testing or auditing procedures
- could reasonably be expected to impede the flow of information to the Department as a regulatory agency
- could reasonably be expected to prejudice the Department's ability to obtain confidential information
- 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
    - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the personal information would not provide you with any further insight into the workings of government beyond that substantive information

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- 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

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 exemption 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.

5.10 Section 22 – deletion of irrelevant and/or 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 to grant you partial access to the information you have requested, I have prepared an edited copy of the documents being released by deleting the exempt information from the documents under section 22(1)(a)(i) of the FOI Act.

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.

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

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

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

For your reference the Department's Disclosure Log can be found here: 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)

Susan Charles
Authorised Decision Maker
Assistant Secretary
Communication, Ministerial and Parliamentary Services Branch
People, Governance, Parliamentary and Communications Division

Date: 23 January 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-063

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	29 Sep 22	SB22-000084: Climate Change: Summary of Portfolio Actions	Access granted in part	s47F
2.	29 Sep 22	SB22-000086: Online Safety Campaign	Access granted in full	
3.	27 Oct 22	SB22-000085: Budget Funding	Access granted in part	s47, s47E(d), s47F
4.	7 Oct 22	SB22-000087: Classification Board and Classification Review Board recruitment	Access granted in full	
5.	26 Oct 22	SB22-000088: ABC and SBS Funding	Access granted in full	
6.	31 Oct 22	SB22-000089: Community Broadcasting	Access granted in full	
7.	6 Oct 22	SB22-000090: ABC / SBS Board Appointments	Access granted in full	
8.	26 Oct 22	SB22-000091: Online Gambling	Access granted in full	
9.	28 Oct 22	SB22-000092: Government Responses: Media Diversity Report and HoR Inquiry (Regional Newspapers)	Access granted in full	
10.	27 Oct 22	SB22-000093: SBS Relocation Feasibility Study	Access granted in full	
11.	26 Oct 22	SB22-000094: Indo-Pacific Broadcasting Strategy	Access granted in full	
12.	26 Oct 22	SB22-000095: Regional and Local Newspaper Publishers Program	Access granted in full	
13.	6 Oct 22	SB22-000096: Online Safety Reform	Access granted in full	
14.	24 Oct 22	SB22-000097: Online Safety Current Measures	Access granted in part	s47E(d), s47F
15.	23 Sep 22	SB22-000098: Social Media Inquiries	Access granted in full	
16.	Sep 22	SB22-000099: AMF Grant Election Commitment	Access granted in full	
17.	2 Nov 22	SB22-000100: Disinformation and Misinformation	Access granted in part	s47C, s33
18.	31 Oct 22	SB22-000101: Bargaining Code	Access granted in part	s47C
19.	28 Sep 22	SB22-000102: Electoral Integrity	Access granted in full	
20.	26 Oct 22	SB22-000103: News Media Assistance Program	Access granted in full	
21.	10 Oct 22	SB22-000104: Anti-siphoning	Access granted in full	
22.	28 Oct 22	SB22-000105: Prominence	Access granted in part	s47C
23.	29 Sep 22	SB22-000106: Future of Television	Access granted in full	
24.	6 Oct 22	SB22-000107: Media Reform	Access granted in full	
25.	29 Sep 22	SB22-000108: NBN Co equity and loan arrangements	Access granted in part	s47G
26.	29 Sep 22	SB22-000109: NBN Network Performance & Existing Upgrade Plans	Access granted in full	
27.	28 Sep 22	SB22-000110: NBN Pricing and SAU Variation	Access granted in full	
28.	31 Oct 22	SB22-000111: NBN Shareholder Issues	Access granted in full	
29.	20 Sep 22	SB22-000112: NBN Valuation	Access granted in full	

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Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
30.	21 Sep 22	SB22-000113: NBN Election Commitment for New Investment in Fibre	Access granted in full	
31.	27 Sep 22	SB22-000114: NBN Election Commitment: Upgrade Fixed Wireless and Satellite	Access granted in full	
32.	12 Oct 22	SB22-000115: Commercial Broadcasting Tax	Access granted in full	
33.	27 Sep 22	SB22-000116: Public Safety Mobile Broadband	Access granted in full	
34.	26 Sep 22	SB22-000117: Telecommunications Resilience (incl STAND and CBNMS)	Access granted in part	s47E(d)
35.	18 Oct 22	SB22-000119: 5G Innovation Initiative	Access granted in part	s45, 47F
36.	27 Sep 22	SB22-000120: First Nations Digital Inclusion	Access granted in part	s47F
37.	4 Oct 22	SB22-000121: Free NBN Services for up to 30,000 Families Election Commitment	Access granted in part	s45
38.	1 Nov 22	SB22-000210: Optus Data Breach	Access granted in full	
39.	6 Sep 22	SB22-000122: Mobile Black Spot Program	Access granted in full	
40.	4 Oct 22	SB22-000123: Mobile Black Spot Program – Key Statistics	Access granted in part	s47F
41.	26 Oct 22	SB22-000124: Better Connectivity Plan - Resilience	Access granted in part	s47F
42.	26 Oct 22	SB22-000125: Mobile Black Spot Program – Improving Mobile Coverage Round	Access granted in part	s47B, s47F
43.	26 Oct 22	SB22-000126: Peri-Urban Mobile Program (PUMP)	Access granted in part	s47F
44.	26 Oct 22	SB22-000127: Regional Connectivity Program	Access granted in part	s47F
45.	26 Oct 22	SB22-000128: Regional Tech Hub	Access granted in full	
46.	26 Oct 22	SB22-000129: On Farm Connectivity	Access granted in part	s47F
47.	10 Oct 22	SB22-000130: Shortland Terrestrial Television Transmission	Access granted in part	s47F
48.	25 Oct 22	SB22-000131: Australia Post Delivery Performance & Basic Postage Rate	Access granted in part	s47F
49.	13 Oct 22	SB22-000132: Australia Post Performance and Remuneration	Access granted in full	
50.	5 Oct 22	SB22-000133: Australia Post Board Governance and Inquiries	Access granted in full	
51.	27 Sep 22	SB22-000134: Telecommunications Scams	Access granted in full	
52.	12 Oct 22	SB22-000135: National Relay Service	Access granted in part	s47E(d)
53.	21 Oct 22	SB22-000136: auDA - Domain Name Registration (incl First Nations Referendum and Direct Registration)	Access granted in part	s47F
54.	5 Oct 22	SB22-000138: Universal Service (Including Payphones and position on reform)	Access granted in full	
55.	6 Sep 22	SB22-000139: Statutory Infrastructure Provider (SIP) Implementation (Including QoS, SRBs and Bill)	Access granted in part	s45
56.	18 Oct 22	SB22-000140: 2021 Regional Telecommunications Independent Review Committee (RTIRC) Report and Government Response	Access granted in part	s47C

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	Decision on access	Provision of FOI Act
57.	4 Oct 22	SB22-000141: Alternative Voice Services Trials	Access granted in full	
58.	2 Nov 22	SB22-000142: National Audit of Mobile Coverage	Access granted in part	s47E(a), s47E(d)
59.	26 Oct 22	SB22-000143: Regional Mobile Expansion Program	Access granted in full	
60.	20 Sep 22	SB22-000144: Quality of Service and Consumer Safeguards	Access granted in full	
61.	5 Oct 22	SB22-000145: Regional Better Connectivity Plan: New Developments (Including Delays and No Fixed Lines)	Access granted in part	s47C
62.	26 Oct 22	SB22-000216: Regional Better Connectivity Plan	Access granted in part	s47F
63.	18 Oct 22	SB22-000218: Regional Based Staff	Access granted in part	s47F
64.	13 Oct 22	SB22-000174: COVID Aviation Support Measures	Access granted in part	s47
65.	11 Oct 22	SB22-000175: Regional Airline Network Support (RANS)	Access granted in full	
66.	13 Oct 22	SB22-000176: Regional Aviation Programs	Access granted in part	s47C
67.	4 Oct 22	SB22-000177: Regional Aviation Security	Access granted in part	s33, s47C, s47E(d)
68.	10 Oct 22	SB22-000178: Demand Management at Sydney Airport	Access granted in full	
69.	1 Oct 22	SB22-000179: Aviation Sector – recovery and data	Access granted in full	
70.	1 Oct 22	SB22-000180: Qantas	Access granted in full	
71.	12 Oct 22	SB22-000181: Virgin Australia	Access granted in full	
72.	27 Sep 22	SB22-000182: Aviation Jobs/Skills	Access granted in full	
73.	12 Oct 22	SB22-000183: Aviation White Paper	Access granted in full	
74.	5 Oct 22	SB22-000184: REX	Access granted in full	
75.	18 Oct 22	SB22-000185: Brisbane Airport, including Noise Issues and Post Implementation Review	Access granted in full	
76.	19 Oct 22	SB22-000208: Jet Zero Council	Access granted in full	
77.	11 Oct 22	SB22-000209: Sustainable Aviation Fuel	Access granted in full	
78.	19 Oct 22	SB22-000211: Melbourne Airport third runway	Access granted in part	s47F
79.	14 Oct 22	SB22-000212: Aviation Security	Access granted in full	
80.	20 Sep 22	SB22-000187: Aviation Agencies	Access granted in part	s47C
81.	11 Oct 22	SB22-000188: Emerging Aviation Technologies Policy	Access granted in full	
82.	6 Oct 22	SB22-000189: Western Sydney Airport Airspace and Flight Paths - Design	Access granted in full	
83.	5 Oct 22	SB22-000190: Western Sydney Airport Airspace and Flight Paths – Environmental Assessment	Access granted in full	
84.	20 Sep 22	SB22-000191: Western Sydney Airport – Biodiversity Offsets	Access granted in part	s47D
85.	11 Oct 22	SB22-000192: Western Sydney Airport - Biodiversity - Orchard Hills	Access granted in full	
86.	14 Oct 22	SB22-000213: Disability access across airports	Access granted in full	
87.	17 Oct 22	SB22-000217: OneSky	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	Decision on access	Provision of FOI Act
88.	26 Sep 22	SB22-000193: Land and Maritime Supply Chain Issues	Access granted in full	
89.	26 Sep 22	SB22-000194: Heavy Vehicle Safety and Productivity	Access granted in full	
90.	18 Oct 22	SB22-000195: Disability Transport Standards	Access granted in full	
91.	26 Sep 22	SB22-000196: Maritime COVID-19	Access granted in full	
92.	10 Oct 22	SB22-000197: Strategic Fleet Taskforce	Access granted in full	
93.	13 Sep 22	SB22-000198: Road User Charging Reform	Access granted in part	s47F
94.	30 Sep 22	SB22-000199: Connected and Automated Vehicles	Access granted in part	s47F
95.	6 Oct 22	SB22-000200: Fuel Tax Credits and Road User Charge	Access granted in part	s47F
96.	11 Oct 22	SB22-000201: Reducing transport emissions	Access granted in full	
97.	5 Oct 22	SB22-000202: Domestic Commercial Vessel Review	Access granted in part	s47C
98.	29 Sep 22	SB22-000203: STP Budget Measures	Access granted in full	
99.	11 Oct 22	SB22-000207: Fuel Efficiency Standards	Access granted in full	
100.	20 Oct 22	SB22-000220: New Climate Change Unit in the Department	Access granted in full	
101.	25 Oct 22	SB22-000225: Tasmanian Freight Equalisation	Access granted in full	
102.	20 Sep 22	SB22-000032: Road Vehicle Standards Act Implementation	Access granted in part	s47F
103.	11 Oct 22	SB22-000033: Road Safety	Access granted in full	
104.	11 Oct 22	SB22-000034: Road Safety Program	Access granted in full	
105.	10 Oct 22	SB22-000035: National Road Safety Data Hub	Access granted in part	s45
106.	26 Sep 22	SB22-000036: Airbag Recalls and Coronial Inquests	Access granted in part	s47F
107.	26 Sep 22	SB22-000206: National Road Safety Strategy and Action Plan	Access granted in part	s47F
108.	25 Oct 22	SB22-000226: Amy Gillet Foundation	Access granted in full	
109.	21 Oct 22	SB22-000037: Infrastructure Investment Program - Budget Overview	Access granted in part	s47F, s47B
110.	11 Oct 22	SB22-000038: Infrastructure Investment Program Delivery	Access granted in part	s47F
111.	7 Oct 22	SB22-000039: Infrastructure National Partnership Agreement	Access granted in part	s47F, s47B
112.	7 Oct 22	SB22-000040: Infrastructure Investment	Access granted in part	s47F
113.	21 Oct 22	SB22-000041: QLD Infrastructure Investment (Road and Rail)	Access granted in full	
114.	21 Oct 22	SB22-000042: WA Infrastructure Investment (Road and Rail)	Access granted in full	
115.	21 Oct 22	SB22-000043: NT Infrastructure Investment (Road and Rail)	Access granted in full	
116.	21 Oct 22	SB22-000044: NSW Infrastructure Investment (Road and Rail)	Access granted in full	
117.	21 Oct 22	SB22-000045: ACT Infrastructure Investment (Road and Rail)	Access granted in full	

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Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
118.	20 Oct 22	SB22-000046: VIC Infrastructure Investment (Road and Rail)	Access granted in part	s47B
119.	21 Oct 22	SB22-000047: SA Infrastructure Investment (Road and Rail)	Access granted in full	
120.	21 Oct 22	SB22-000048: TAS Infrastructure Investment (Road and Rail)	Access granted in full	
121.	13 Sep 22	SB22-000050: Infrastructure Market Capacity	Access granted in full	
122.	19 Oct 22	SB22-000051: Independent Review of Infrastructure Australia	Access granted in full	
123.	20 Oct 22	SB22-000052: Infrastructure Australia - Board	Access granted in part	s47F
124.	26 Sep 22	SB22-000053: High Speed Rail Authority Establishment	Access granted in full	
125.	20 Oct 22	SB22-000221: Urban Congestion Fund	Access granted in part	s47F
126.	20 Oct 22	SB22-000222: Melbourne Airport Rail Link	Access granted in full	
127.	25 Oct 22	SB22-000224: Truck Rest Stops Election Commitment	Access granted in full	
128.	25 Oct 22	SB22-000227: Recent flooding and the impact on roads	Access granted in part	s47F
129.	5 Oct 22	SB22-000054: Inland Rail - Independent Inland Rail Review	Access granted in part	s47F
130.	19 Oct 22	SB22-000055: Inland Rail Operations, Benefits and Stakeholder Engagements	Access granted in part	s47
131.	5 Oct 22	SB22-000056: Inland Rail – Interface Improvement Program	Access granted in full	
132.	5 Oct 22	SB22-000057: Inland Rail – Flood Panel	Access granted in full	
133.	5 Oct 22	SB22-000058: Western Sydney International (Nancy-Bird Walton) Airport	Access granted in part	s47F, s47G
134.	2 Sep 22	SB22-000059: Intermodals - Queensland	Access granted in part	s47B, s47F
135.	19 Oct 22	SB22-000060: Intermodals - Victoria	Access granted in part	s47E(d)
136.	26 Sep 22	SB22-000061: Toowoomba to Gladstone	Access granted in full	
137.	28 Sep 22	SB22-000062: National Intermodal Corporation	Access granted in part	s47F, s47G
138.	20 Oct 22	SB22-000063: Significant Projects Investment Delivery Office (SPIDO)	Access granted in full	
139.	26 Oct 22	SB22-000064: 2023 Olympic & Paralympic Games	Access granted in part	s47B, s47F
140.	20 Oct 22	SB22-000205: Suburban Rail Loop	Access granted in part	s47B, s47G
141.	25 Oct 22	SB22-000065: Regional Policy	Access granted in part	s47B
142.	20 Sep 22	SB22-000067: Regional Development Australia Committees	Access granted in part	s47F
143.	25 Oct 22	SB22-000068: Local Government Financial Assistance Grant Program	Access granted in part	s47F
144.	20 Sep 22	SB22-000069: Local Government	Access granted in part	s47F
145.	11 Oct 22	SB22-000071: Community Development Grants	Access granted in part	s47F
146.	19 Sep 22	SB22-000072: Building Better Regions Fund	Access granted in part	s47F

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Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
147.	26 Oct 22	SB22-000074: Regional Programs - Budget 2022 (new programs)	Access granted in full	
148.	26 Oct 22	SB22-000075: Delivery of legacy regional programs	Access granted in full	
149.	30 Sep 22	SB22-000076: Indian Ocean Territories Key Issues	Access granted in full	
150.	30 Sep 22	SB22-000077: Territories COVID Response	Access granted in full	
151.	30 Sep 22	SB22-000078: Jervis Bay Territory Key Issues	Access granted in part	s47F
152.	19 Oct 22	SB22-000079: ACT and NT Key Issues	Access granted in part	s47F
153.	30 Sep 22	SB22-000080: Norfolk Island Key Issues	Access granted in full	
154.	27 Sep 22	SB22-000081: Norfolk Island State Services	Access granted in full	
155.	30 Sep 22	SB22-000082: Norfolk Island Regional Council	Access granted in full	
156.	20 Oct 22	SB22-000152: City Deal: Geelong	Access granted in part	s47F
157.	10 Oct 22	SB22-000153: City Deal: South East Queensland	Access granted in part	s47B, s47F
158.	21 Oct 22	SB22-000154: City Deal: Townsville	Access granted in part	s47F
159.	30 Sep 22	SB22-000155: City Deal: Adelaide	Access granted in part	s47F
160.	25 Oct 22	SB22-000156: City Deal: Western Sydney	Access granted in part	s47F
161.	20 Oct 22	SB22-000157: Regional Deal: Albury Wodonga	Access granted in part	s47F
162.	21 Oct 22	SB22-000158: Regional Deal: Hinkler	Access granted in part	s47F
163.	30 Sep 22	SB22-000159: Cities Policy	Access granted in part	s47E(d), s47F
164.	20 Oct 22	SB22-000160: Cities and City Deals: Stakeholder Engagement	Access granted in part	s47F
165.	17 Oct 22	SB22-000161: City Deal: Hobart	Access granted in part	s47F
166.	19 Oct 22	SB22-000162: City Deal: Darwin	Access granted in part	s47G, s47F
167.	7 Oct 22	SB22-000163: City Deal: Launceston	Access granted in part	s47F
168.	19 Oct 22	SB22-000164: City Deal: Perth	Access granted in part	s47F
169.	24 Oct 22	SB22-000165: City Deals: Melbourne	Access granted in part	s47E(d), s47F
170.	20 Oct 22	SB22-000166: Regional Deal: Barkly	Access granted in part	s47F, s47B
171.	30 Oct 22	SB22-000167: Indigenous Reference Group	Access granted in part	s47F
172.	30 Sep 22	SB22-000168: NAIF Governance	Access granted in full	
173.	30 Sep 22	SB22-000169: Office of Northern Australia	Access granted in part	s47F
174.	18 Oct 22	SB22-000171: Northern Australia Grants Programs	Access granted in part	s47F
175.	30 Sep 22	SB22-000172: Northern Australia Agenda	Access granted in part	s47F
176.	30 Sep 22	SB22-000173: Energy Security and Regional Development Plan	Access granted in part	s47F
177.	25 Oct 22	SB22-000223: Precincts and Partnerships Program (PPP)	Access granted in full	

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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 23-073

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 8 November 2022, 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 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.

2 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

3 Scope of your request

You requested access to:

> *a copy of the Department of Infrastructure, Transport, Regional Development, Communication and the Arts – Arts and Cultural Development's estimates briefing pack, including back pocket briefs, for the 2022 October and November Budget Estimates Decision*

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4 Decision

I have identified 24 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 19 documents
- grant partial access to five documents

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

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the parts of documents are set out below.

5.1 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 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 document sets out the

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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 document 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.

5.2 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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.

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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 document marked 's47E(d)' contain information which, if disclosed, would or cold 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 the parts of the document marked 's47E' is 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.

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:

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> 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 individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety to the individuals concerned
- the information is current and has not lost its sensitivity through the passage of time

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- 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.

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 parts of the documents marked 's47G' contain business affairs information that is relevant to 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

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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.

5.5 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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.

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- 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 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 impede the flow of information to the Department as a regulatory agency
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
    - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the 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 exemption 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 exempt material and allows an agency to delete such material from a document.

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

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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.

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, the Department may also publish the released material on its Disclosure Log. The Department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the Department's Disclosure Log can be found here: 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)

Susan Charles
Authorised Decision Maker
Assistant Secretary
Communication, Ministerial and Parliamentary Services Branch
People, Governance, Parliamentary and Communications Division

Date: 23 January 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	2 Nov 22	SB22-000204 - Restart Investment to Sustain and Expand (RISE) Fund	Access granted in full	
2.	26 Oct 22	SB22-000146 - Live Performance Insurance Scheme	Access granted in full	
3.	24 Oct 22	SB22-000147 - October Budget Outcomes	Access granted in full	
4.	24 Oct 22	SB22-000148 - National Cultural Policy	Access granted in full	
5.	1 Nov 22	SB22-000149 - Digital Games Tax Offset	Access granted in full	
6.	21 Sep 22	SB22-000150 - Australian Content Standards – Performance	Access granted in full	
7.	21 Sep 22	SB22-000151 - Location Incentive and Large Budget International Film Production	Access granted in full	
8.	18 Oct 22	BP-01 - Support for the Domestic Screen Sector	Access granted in full	
9.	2 Nov 22	BP-02 - 2022-23 Arts Funding	Access granted in part	s47E(d)
10.	8 Nov 22	BP-03 - Indigenous Languages	Access granted in full	
11.	25 Oct 22	BP-04 - Bundanon Trust Financial Position	Access granted in full	
12.	18 Oct 22	BP-05 - NIDA Financial Position	Access granted in part	s47G
13.	18 Oct 22	BP-06 - Australian Content Quota Reform	Access granted in full	
14.	28 Oct 22	BP-07 - Arts Agency Appointments and Vacancies	Access granted in part	s47F
		Attachment 1: Positions across Boards/Committees	Access granted in full	
		Attachment 2: Senate Order 15: Appointments and Vacancies	Access granted in full	
15.	3 Nov 22	BP-08 - Indigenous Visual Arts	Access granted in part	s47F
16.	6 Oct 22	BP-09 - Support for Literature	Access granted in full	
17.	1 Nov 22	BP-10 - Australian Music Industry	Access granted in full	
18.	10 Oct 22	BP-11 - Protection of Movable Cultural Heritage Act	Access granted in full	
19.	11 Oct 22	BP-12 - Creative Partnerships transfer of functions to Australia Council	Access granted in part	s47C
20.	7 Oct 22	BP-13 - Temporary Interruption Fund	Access granted in full	
21.	3 Nov 22	BBP-01 - NCI Financial Sustainability	Access granted in full	
22.	Nov 22	BBP-02 - Regional and Remote Australia Arts Funding	Access granted in full	

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 23-088
s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 1 December 2022 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 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.

2 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

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3 Scope of your request

You requested access to:

> *a copy of the report including the summary of findings / recommendations of the independent audit into RDA Brisbane commissioned by the Department and undertaken by Protiviti between August and December 2021*

4 Decision

I have identified one document 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 this document.

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

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the parts of document are set out below.

5.1 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 parts of the document marked 's37(2)(a)' contain information which, if disclosed, would, or could reasonably be expected to prejudice the impartial adjudication of the Fair Work Commission Application for an order to stop bullying under s.789FC (SO2022/589).

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 Application for an order to stop bullying under s.789FC (SO2022/589), referred to above.

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For the reasons outlined above, I decided that the parts of the documents marked 's37(2)(a)' are exempt from disclosure under section 37 of the FOI Act.

5.2 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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 documents marked 's47E(d)' contain information which, if disclosed, would or cold 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 the 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.

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).

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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:

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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 individuals whose personal information is contained in the document are identifiable
- release of this information would cause anxiety to the individuals concerned
- 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.

5.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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:

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

- could reasonably be expected to impede the administration of justice generally, including procedural fairness
- could reasonably be expected to prejudice the Department's ability to obtain confidential information
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
    - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the 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

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(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 exemption 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 exempt material and allows an agency to delete such material from a document.

As I decided to grant you partial access to the information you have requested, I have prepared an edited copy of the document being released by deleting the exempt information from the documents under section 22(1)(a)(i) of the FOI Act.

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.

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, the Department may also publish the released material on its Disclosure Log. The Department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the Department's Disclosure Log can be found here: 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)

s22(1)(a)(ii)
Authorised Decision Maker
A/g Assistant Secretary, Local Government, Regional Intelligence and Data Branch
Regional Development and Local Government Division
Date: 27 January 2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-088

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	28	December 2022	Independent Audit – RDA Brisbane, Summary of Observations	Access granted in part	s37(2)(a) s47E(d) s47F

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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 23-091

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 2 December 2022, 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 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.

2 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

3 Scope of your request

You requested access to:

> *1) A report detailing the $37 million in emergency funding into the island economy to keep it afloat, more than $20,000 for each of the 1800 permanent residents that was published on or about March 2012 and how the money was distributed, expended or applied in any manner.*
> *2) The Norfolk Island Development Report unredacted.*
> *3: The Covering letter in Australian Government Department of Infrastructure and Regional Development, The Australian National Audit Office Independent Report of Norfolk Island's Financial Statements 2012/3, (10 December 2013).*

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4: Detailed information as to lack of financial controls on Norfolk Island between 2010 and 2014 as indicated by ***A 2014 Australian National Audit Office report formerly at:*** *https://www.anao.gov.au/~/media/Files/Audit%20Reports/2014%202015/Report%2016/AuditReport_2014-2015_16.PDF.*
5: A copy of the Island Road Map the five-year agreement for the reform of the governance and finances of Norfolk Island Signed by Simon Crean and David Buffet
6: A copy of Four funding agreements were signed with conditions linked to the Norfolk Island Roadmap. The agreements dated from 2010 to 2014.
7. Documents relating to Payment of any funding provided by the Commonwealth and details of the agreed milestones Norfolk Island was to meet to receive funding. Details of how this funding was accounted for or expended by the Norfolk Island Government.

4 Decision

Part 6

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 two documents.

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

My reasons for refusing access to information that is relevant to your request are set out below.

Parts 1-4, 5 & 7

The right of access under the FOI Act is limited to a document in the possession of the Department.

A 'document' that may be requested under the FOI Act does not include material maintained for reference purposes that is otherwise publicly available. Also, 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).

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.

The business area responsible for the subject matter of your request have conducted searches of the Department's information holdings, including PDMS, Outlook, Records Management Systems. No documents matching the description in your request were identified as being in the possession of the Department.

I am satisfied that all reasonable steps have been taken to find documents which would be relevant to your request and that the documents cannot be located.

I have decided to refuse your request 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 your request.

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Under Section 4 of the FOI Act, the definition of a document does not include material maintained for reference purposes that is otherwise publicly available. While two of the documents you have requested fall into this category I am, in the spirit of cooperation, providing the links to these documents as follows:

- Norfolk Island Economic Development Report 2012 Norfolk Island Economic Development Report
- Island Road Map Norfolk Island Road Map

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemption identified in the schedule of documents apply to the parts of documents 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,

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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 individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety to the individuals concerned
- 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.

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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.

5.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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

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

- I note that the substance of the information that is relevant to your request has been released to you and disclosure of the 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 exemption 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 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 for release to you 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 to grant you partial access to the information you have requested, I have prepared an edited copy of the documents being released by deleting the exempt information from the documents under section 22(1)(a)(i) of the FOI Act.

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.

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

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT A.**

SCHEDULE OF DOCUMENTS FOI 23-

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.		2013-14 Funding agreement between the Commonwealth of Australia and the Administration of Norfolk Island	Access granted in part	47F
2.	14 Oct 14	2014-15 Funding agreement between the Commonwealth of Australia and the Administration of Norfolk Island	Access granted in part	47F, 22

ATTACHMENT B.

8 Publication of material released under the FOI Act

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

For your reference the Department's Disclosure Log can be found here: 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)

Aaron O'Neill
Authorised Decision Maker
Assistant Secretary
Norfolk Island Branch
Territories Division

Date: 31/01/2023

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

ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
3.		2013-14 Funding agreement between the Commonwealth of Australia and the Administration of Norfolk Island	Access granted in part	47F
4.	14 Oct 14	2014-15 Funding agreement between the Commonwealth of Australia and the Administration of Norfolk Island	Access granted in part	47F, 22

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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 23-093

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 7 December 2022, 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 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.

2 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

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3 Scope of your request

You requested access to:

> *"A list of assessors for the RISE fund grant applications, including full name, job title and employer; A list of assessors for the Live Music Australia grant applications, including full name, job title and employer"*

4 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 three written discrete documents that contain the information you are seeking to access.

I have decided to refuse access to the 3 documents in full.

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

My reasons for refusing access to information that is relevant to your request are set out below.

Please be advised however, that as outlined in the RISE Guidelines, eligible applications to the program were assessed by officials from the Department. As outlined in the Live Music Australia Guidelines, eligible applications to the program are similarly assessed by Department officials.

5 Finding of facts and reasons for decision

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

5.1 Section 47E - Documents affecting certain operations of agencies

Management of personnel by the Department

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 release of such information could cause harm to their physical and mental wellbeing.

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I am satisfied that disclosure of the personal information of public servants contained in the documents relevant to your request 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.

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. These channels 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.

I am of the view that disclosure of the documents marked 's47E(c)' relate to the management of personnel and concern the Departments obligation to uphold its workplace health and safety functions, so that staff may be protected from needless pursuit and harassment.

I am satisfied that disclosure of the documents marked 's47E(c)' in the schedule would, or could reasonably be expected to have, a substantial adverse effect on the management or assessment of personnel by the Department.

Proper and efficient conduct of the operations of the Department

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 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.

Upon agreeing to undertake the role as 'assessor' for the Live Music Australia grants, the Industry Representatives signed a contact which contained a clause that specifically states their personal details will be kept confidential by the Department. I am of the view that if these personal details of Industry Representatives were to be disclosed it would, or could reasonably be expected to, inhibit the Department's ability to undertake similar programs in future. An Industry representative may be less willing to participate in similar programs with the Department in the future if there is a precedent of disclosure of their personal details, particular where this disclosure is contrary to a signed agreement with the Department. There is no legislative obligation on Industry Representatives to assist the Department with these programs, and the Department is reliant on the goodwill of those individuals to participate in and ensure the effective management of these types of programs. In limiting the pool of Industry Representatives who may be willing to particular in such programs in the future

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would have a substantial and an adverse effect on the Department being able to undertake this type of work in the future.

Similarly, disclosure could negatively effect the process of assessing applications in similar programs in the future. If Assessors were aware that there was a potential for their personal details to be disclosed, they may alter their decisions, either consciously or subconsciously, to ensure they are not subjected to unsolicited harassment. The Department would be required to establish new processes as to ensure Assessors felt protected from such harassment and to ensure that the assessment process was not subjected to the chilling effect of Assessors being concerned about disclosure of their personal details. The establishment of new programs would require substantial resources within the Department which would have a substantial and adverse effect on its operations.

I am satisfied that the documents marked 's47E(d)' in the schedule 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 the documents marked 's47E' 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.

5.2 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 documents marked 's47F' in the schedule includes personal information about a number of individuals, both private individuals and public servants.

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

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

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- 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

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.

The documents contain the personal information of Australian Public Service (APS) staff who are not in the Senior Executive Service (SES).

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 the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety 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 private individuals during the course of making my decision.

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For the reasons outlined above, I decided that the documents marked 's47F' in the schedule 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, the Department 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 management function of the Department
- could reasonably be expected to impede the fair and reasonable administration of a program managed by the Department and compromise the integrity of similar programs in the future

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- could reasonably be expected to prejudice the Department's ability to attract and retain the services of Assessors in similar programs in the future
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy

- 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

In considering the public interest in disclosing public servants' personal information to you, I have taken into consideration the following factors that weigh against disclosure of the conditionally exempt information at this time:

- the type of work undertaken by the relevant staff
- the particular circumstances of the relevant staff such that the staff members may be vulnerable to, or at greater risk of harm, if their name and contact details are disclosed
- the fact that the relevant staff details are not publicly available, including in the Government Online Directory.

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 exemption 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 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.

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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.

Yours sincerely

s22(1)(a)(ii)

Anne-Louise Dawes
Authorised Decision Maker
Assistant Secretary
Creative Industries Branch
Creative Economy Division

Date: 6 February 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-093

Doc No.	Description of document	Decision on access	Provision of FOI Act
1.	Restart Investment to Sustain and Expand (RISE) Fund - Internal Assessors	Access refused	s47E(c) s47F
2.	Live Music Australia (LMA) - Internal Assessors	Access refused	s47E(c) s47F
3.	Live Music Australia - (LMA) External Assessors	Access refused	s47E(d) s47F

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FOI 25-114 -Document 147

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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 23-124

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 16 January 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 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.

2 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

3 Scope of your request

You requested access to:

> *a copy of the Minister for the Art's Question Time Briefing pack for Question time in the Thursday 1st of December 2022*

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4 Decision

I have identified seven 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 six documents
- grant partial 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.**

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemption identified in the schedule of documents apply to the parts of document are set out below.

5.1 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, do any of the following:

(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;

(d) 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 document marked 's47E(d)' contain information which, if disclosed, would or could reasonably be expected to, have a substantial and an adverse effect on the Department's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful

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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 the parts of the document marked 's47E(d)' are conditionally exempt from disclosure under section 47E(d) 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, the Department 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 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 impede the flow of information to the Department as a regulatory agency.

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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 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 for release to you 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 direct telephone numbers 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 to this, as I decided to grant you partial access to one document, I have prepared an edited copy of that document by deleting the exempt information from it under section 22(1)(a)(i) of the FOI Act.

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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B.**

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8 Publication of material released under the FOI Act

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

For your reference the Department's Disclosure Log can be found here: 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)

Greg Cox
Authorised Decision Maker
First Assistant Secretary
Office for the Arts

Date: 10/2/23

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-124

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	27/09/22	QB22-000396 001 Australian Music Industry - Workplace and Sexual Harassment	Release relevant information in full	s22
2.	19/10/22	QB22-000367 001 Live Performance Insurance Scheme	Release relevant information in full	s22
3.	19/10/22	QB22-000353 001 First Nations- Policy commitments and progress-action	Release relevant information in full	s22
4.	25/10/22	QB22-000295 001 Arts - Progress on Labor's Commitments	Release relevant information in full	s22
5.	24/10/22	QB22-000217 001 Arts - Funding	Release relevant information in part	s22 s47E(d)
6.	01/09/22	QB22-000216 001 Arts - Support for the screen sector	Release relevant information in full	s22
7.	21/10/22	QB22-000214 001 Arts - National Cultural Policy	Release relevant information in full	s22

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 23-129

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 20 January 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 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.

2 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

3 Scope of your request

You requested access to:

> *…the review of the Classification system submitted by Mr Neville Stevens AO in 2020.*
> *https://www.classification.gov.au/about-us/media-and-news/news/classification-review-extended-due-covid-19*

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4 Decision

I have identified one document that is relevant to your request. This document is titled "Review of Australian classification regulation – Report" and is dated May 2020 (the Report). It was in the possession of the Department when your request was received.

I have decided to refuse access to the one document in full.

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemption identified in the schedule of documents apply to the relevant documents are set out below.

5.1 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 Report meets the criteria of deliberative matter, and it forms part of an ongoing deliberative process. The Report sets out the weighing up and evaluation of competing arguments in relation to the review of the classification regulation framework. This Report remains under consideration by the Australian government and state and territory classification Ministers through the Standing Council of Attorneys-General's process. I am satisfied that this deliberative matter relates to a process that was undertaken within government to consider whether and how to make or implement a decision, revise or prepare a policy or to administer or review a program. A decision regarding the recommendations contained

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within the Report has not been finalised and thus the Report constitutes part of the ongoing thinking process or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that 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.

5.2 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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.

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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
- disclosure could reasonably be expected to prejudice the ability of Departments across government to provide full and honest advice to its Ministers
- Information provided to a portfolio Minister by its Department as part of a review process, where the Minister is being asked to consider options and recommendations is inherently confidential between the Department and its Minister during the process of making, implementing or reviewing that process and finalising a decision. A precedent of premature public disclosure of advice given as part of ongoing Ministerial evaluation of a particular matter could reasonably be expected to inhibit full and frank advice from Departments to its Ministers, and, as a result, has the potential to impede full consideration by the Government on any potential future considerations regarding similar review processes.

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 exemption 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 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.

7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT A.**

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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)

Maria Vassiliadis
Assistant Secretary
Classification Branch
Online Safety, Media & Platforms Division

Date: 14/2/23

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 23-083

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 23 November 2022, 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 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.

2 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

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3 Scope of your request

You requested access to:

> *All documents comprising correspondence or containing information about any one or more or all of the review, assessment, analysis and consideration, by any official of the Department, of:*
>
> - *the Canberra Airport 2020 Master Plan for the purposes of the Airports Act 1996*
> - *the Preliminary Draft Master Plan and any other drafts that immediately preceded the Canberra Airport 2020 Master Plan*
> - *proposed or approved amendments or changes or variations (if any) to the Canberra Airport 2020 Master Plan, and*
> - *proposed replacement plans (if any) to supersede the Canberra Airport 2020 Master Plan (collectively 'the recent planning documents for Canberra Airport').*

All documents comprising correspondence, or containing information about correspondence or discussions, between any official of the Department and any person outside the Department, including a Minister appointed to administer the Department and any of that Minister's staff, if the document deals in whole or part with a matter relevant to the recent planning documents for Canberra Airport, including any document containing or dealing with or mentioning any recommendation to a Minister in relation to any aspect of any of the recent planning documents for Canberra Airport

3.1 Clarification/Modification of scope of request

On 7 December 2022, following consultation with you, you agreed to modify the scope of your request to the following:

- *All correspondence between the Department and external parties (excluding CASA and Airservices), regarding the review, assessment, analysis and consideration, of the Canberra Airport 2020 Master Plan for the purposes of the Airports Act 1996.*
- *All correspondence between the Department and any Minister appointed to administer the Department and any of that Minister's staff, regarding the Canberra Airport 2020 Master Plan, including any document containing or dealing with or mentioning any recommendation to a Minister in relation to any aspect of any of the recent planning documents for Canberra Airport.*

On 16 December 2022, you agreed to further revise your scope to:

> *exclude submissions by third parties in relation to the Master Plan which do not specifically reference Canberra Airport's runway-related development*

4 Decision

I have identified 90 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

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I have decided to:

- grant access in full to 40 documents
- grant partial access to 49 documents
- refuse 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.**

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the parts of documents are set out below.

5.1 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

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- 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.

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 parts of the document marked 's47B(b)' 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 and/or Territory 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 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.

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

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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.

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.

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.

5.3 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.

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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 the parts of the documents marked 's47E(d)' are conditionally exempt from disclosure under section 47E(d) 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 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.

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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.

5.5 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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

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- 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 prejudice or impair the future flow of information from state and territory governments to the Commonwealth
- could reasonably be expected to impede the flow of information to the Department as a regulatory agency
- 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 portfolio Ministers due to the importance of maintaining confidentiality in the relationship and the need for continuity of frankness, candour and completeness in the advice and commentary contained in Ministerial Submissions. There is a special nature and role of Ministerial Submissions and any prejudice or impairment to this process weighs heavily against disclosure being in the public interest
- could reasonably be expected to prejudice the Department's ability to obtain confidential 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.

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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 exemption 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 exempt material and allows an agency to delete such material from a document.

In your original FOI request you indicated that you did not seek access to the work email address or work or mobile phone numbers of any official and that you did not seek access to any personal information of individuals who are not officials.

Additionally, in the Department's acknowledgement of your request on 28 November 2022, we advised you that the Department does not release information that is considered 'personal information' of individuals other than you as the applicant.

As such, I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. This includes the names, employment circumstance, telephone numbers and email addresses of a number of individuals, both public servants who are not in the Senior Executive and private individuals. An edited copy of those documents has been prepared for release to you 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 to grant you partial access to the information relevant to your request, I have prepared an edited copy of the documents being released by deleting the exempt information from the documents under section 22(1)(a)(i) of the FOI Act. The relevant exemption has been annotated to each deletion for your reference.

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.

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, the Department may also publish the released material on its Disclosure Log. The Department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the Department's Disclosure Log can be found here: www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log.

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Further information

If you require further information regarding this decision, please contact the Department's FOI Section at FOI@infrastructure.gov.au.

Yours sincerely

Phil McClure
Assistant Secretary
Airports Branch
Domestic Aviation & Reform Division

Date: 17 February 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-083

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1	13 Aug 19	Notification by Canberra Airport to Deputy PM of release of draft Master Plan	Access granted in full	
2	27 Feb 20	Ministerial Submission MS19-002376	Access refused	47C
2.1		Attachment A – Master Plan Draft	Access granted in part	22
2.2		Attachment C – Section 71 Assessment	Access granted in full	
2.3		Attachment D – Section 81 Assessment	Access granted in full	
2.4		Attachment E – Draft Media Release for Minister McCormack	Access granted in part	22
3	23 Apr 19	Email from Department to interested stakeholders calling for comments on Canberra Airport edMP	Access granted in part	22, 47E(d)
4	20 May 19	Email: Canberra Airport exposure draft Master Plan 2019	Access granted in part	22
4.1		Attachment: ABC Comment for Canberra Airport Master Plan 2019	Access granted in full	
5	2019	Canberra Airport DMP Consultation Report	Access granted in part	22
5.1	10 Dec 19	Canberra Airport – Certificate under ss 79(1A) and (1B) of the Airports Act	Access granted in full	
5.2	10 Dec 19	Canberra Airport – Certificate under s 79(2) of the Airports Act	Access granted in full	
5.3	10 Dec 19	Canberra Airport – Certificate under s 80(2) of the Airports Act	Access granted in full	
5.4	2019	Pre-Consultation Index	Access granted in full	
5.5	18 Jul 18	File note of meeting between Stephen Byron and Director-General, ACT Environment, Planning and Sustainability Development Directorate	Access granted in full	
5.6	4 Apr 19	File note of meeting between Canberra Airport and NSW Department of Planning & Environment and Queanbeyan-Palerang Regional Council	Access granted in part	22
5.7	8 Oct 18	Presentation by Canberra Airport to SRBEC Annual National Conference	Access granted in full	
5.8	29 Jan 19	Presentation by Canberra Airport to CRJO Regional Planners	Access granted in full	
5.9	10 Apr 19	File note of meeting between Canberra Airport and Village Building Co	Access granted in part	22
5.10	22 Nov 18	CACG meeting notes	Access granted in part	22
5.11	16 Oct 18	Minutes of PCF meeting	Access granted in part	22

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Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
5.12	2019	ANEF Consultation Index	Access granted in full	
5.13	12 Aug 19	Ultimate Practical Capacity ANEF (Signed)	Access granted in part	22
5.14	26 Jul 19	Canberra Airport Draft Practical Ultimate Capacity 2019 – Consultations Report	Access granted in part	22
5.15	2019	Variation Assessment Plans for JRA presentation	Access granted in full	
5.16	2019	Exposure Draft Master Plan Index	Access granted in full	
5.17	May 19	Michael Thompson Presentation – Wagga to the World	Access granted in full	
5.18	15 May 19	File note – Meeting between Canberra Airport and Department of Infrastructure	Access granted in part	22
5.19	May 19	Michael Thompson presentation to CRJO Board Meeting	Access granted in part	22
5.20	21 Jun 19	File note – Meeting between Canberra Airport and Friends of Grasslands	Access granted in part	22
5.21	27 Jun 19	File note – Meeting between Canberra Airport and ACT Government	Access granted in part	22
5.22	25 Jul 19	CACG Minutes	Access granted in part	22
5.23	30 Jul 19	PCF Minutes	Access granted in part	22
5.24	8 Aug 19	Presentation by Canberra Airport to CRJO Regional Planners	Access granted in full	
5.25	24 May 19	ACT Government submission on EDMP	Access granted in part	47B
5.26	31 May 19	Department of Infrastructure comments on edMP	Access granted in part	22
5.27	23 May 19	Airservices Australia comments on edMP	Access granted in part	22
5.28	21 May 19	Department of Environment and Energy comments on edMP	Access granted in part	22
5.29	4 Jun 19	CASA comments on edMP	Access granted in part	22
5.30	2019	Preliminary draft index	Access granted in full	
5.31	2019	Advertisements notifying of MP	Access granted in full	
5.32	2019	Preliminary draft MP Website Analytics	Access granted in full	
5.33	13 Aug 19	Letter from Canberra Airport to Minister Ayres notifying of consultation on pdMP	Access granted in full	
5.34	11 Sep 19	File note of meeting between Canberra Airport and ACT Government Agencies re: pdMP	Access granted in full	
5.35	12 Sep 19	File note of meeting between Canberra Airport and Queanbeyan-Palerang Regional Council	Access granted in full	

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Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
5.36	26 Sep 19	File note of meeting between Canberra Airport and Virgin Australia	Access granted in part	22
5.37	27 Sept 19	File note of meeting between Canberra Airport and Poplars PCG	Access granted in full	
5.38	30 Sep 19	File note of telephone conversation between Canberra Airport and Singapore Airlines	Access granted in full	
5.39	8 Oct 19	File note of Commonwealth Intra-Agency Briefing on pdMP	Access granted in part	22
5.40	9 Oct 19	File note of presentation to Qantas by Canberra Airport on pdMP	Access granted in full	
5.41	10 Oct 19	File note of presentation by Canberra Airport to Property Council of Australia ACT: Economic Development and Infrastructure Committee	Access granted in full	
5.42	Oct 16	Canberra Airport presentation for Canberra Region Tourism Advisory Forum and Leaders Forums	Access granted in full	
5.43	23 Oct 19	File note of presentation to Airservices Australia by Canberra Airport	Access granted in part	22
5.44	29 Oct 19	Meeting notes of Canberra Airport presentation at ATC Safety Awareness Information Night	Access granted in full	
5.45	Oct 19	Canberra Airport presentation: Canberra Convention Bureau	Access granted in full	
5.46	24 Sep 19	Meeting notes – Presentation to Jerrabomberra Residents Association by Canberra Airport	Access granted in part	22
5.47	1 Oct 19	Meeting notes – Presentation to Tuggeranong Community Council by Canberra Airport	Access granted in part	22
5.48	8 Oct 19	Meeting notes – Canberra Airport presentation to Pialligo Residents Association	Access granted in full	
5.49	24 Oct 19	CACG Minutes	Access granted in part	22
5.50	2019	Advertisements regarding Public Information Sessions	Access granted in full	
5.51	2019	Media articles regarding edMP	Access granted in full	
5.52	2019	Submissions and due regard index	Access granted in part	47G, 47B, 22
5.53	2019	Submission from Ridgeway Community Group re: pdMp	Access granted in full	
5.54	5 Nov 19	Submission from Jerrabomberra Residents Association Inc. re: pdMP	Access granted in part	22
5.55	6 Nov 19	Submission re: pdMP	Access granted in part	47G
5.56	Nov 19	Submission re: pdMP	Access granted in part	47B
5.57	11 Nov 19	Submission by Airservices Australia re: pdMP	Access granted in part	22
5.58	18 Nov 19	Submission by Department of Defence re: pdMP	Access granted in full	
5.59	17 Jan 20	Correspondence from Canberra Airport to NCA	Access granted in full	

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Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
5.60	17 Jan 20	Correspondence from Canberra Airport to ACT Government	Access granted in full	
5.61	17 Jan 20	Correspondence from Canberra Airport to Robert Stokes MP	Access granted in full	
5.62	17 Jan 20	Correspondence from Canberra Airport to Queanbeyan-Palerang Regional Council	Access granted in full	
6	30 Jan 20	Email: Canberra Airport exposure draft Master Plan 2019	Access granted in part	22, 47E(d)
7	10 Dec 19	Letter confirmation of dMP delivery to Minister	Access granted in full	
8	27 Feb 20	Email: Canberra Airport 2020 Approved Final Master Plan	Access granted in part	22
8.1	27 Feb 20	Attachment: List of amendments/corrections	Access granted in full	
9	4 Mar 20	Email: Canberra Airport approved 2020 Master Plan now live	Access granted in part	22
10	20 Dec 19	Email: dMP Section 79(1B) a	Access granted in part	22
11	24 Jan 20	Email: Reg 5.02(3) in dMP	Access granted in part	22
12	11 Dec 19	Email: Canberra Airport 2020 final draft Master Plan	Access granted in part	22
13	11 Dec 19	Email: Canberra Airport 2020 draft Master Plan	Access granted in part	47E(d), 22
14	27 Feb 20	Email: Canberra Airport Draft Master Plan / small amendments / for your consideration	Access granted in part	22
15	23 Apr 19	Email: Canberra Airport exposure draft Master Plan 2019	Access granted in part	47E(d), 22
16	3 Feb 20	Email: Publication of Canberra Airport's Final 2020 Master Plan	Access granted in part	22
17	10 Dec 19	Email: Canberra Airport Master Development Plan received	Access granted in part	22
18	6 Dec 19	Email: Canberra Airport / Draft Master Plan / Electronic Copy	Access granted in part	22
19	14 Feb 20	Email: Canberra Airport Master Plan approval	Access granted in part	22
20	20 Jan 20	Email: Canberra Airport 2020 draft Master Plan	Access granted in part	47E(d), 22
21	11 Nov 19	Email: Canberra Airport 2020 Approved Final Master Plan	Access granted in part	22

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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

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.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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Australian Government

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

Our reference: FOI 23-133

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Decision on your Freedom of Information Request

I refer to your request of 23 January 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 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.

2 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

3 Scope of 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 Stronger Communities Programme Round 8;*
b) *Draft guidelines for the Stronger Communities Programme Round 8; and*

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c) *Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the Stronger Communities Programme Round 8*

3.1 Clarification/Modification of scope of request

On 30 January 2023, following consultation with you, you agreed to modify part (c) of the scope of your request to the following:

> *c) Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding program development or the development of guidelines, including emails relating to the timing of Ministerial decisions regarding program development and guidelines, for the Stronger Communities Programme Round 8.*

On 12 February 2023, you agreed to modify part (b) the scope of your request to the following:

> *b) the initial iteration of draft guidelines for the Stronger Communities Programme Round 8 provided to the Minister for Infrastructure, Transport, Regional Development and Local Government*

4 Decision

I have identified 10 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 four documents
- grant access in full to relevant information in two documents
- grant partial access to four documents

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

My reasons for refusing access to information that is relevant to your request are set out below.

5 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemption identified in the schedule of documents apply to the parts of documents are set out below.

5.1 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.

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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 documents 2 and 4 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.

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.

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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.

5.3 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, do any of the following 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 the parts of the documents marked 's47E(d)' are conditionally exempt from disclosure under section 47E(d) 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.

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5.4 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, the Department 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 provide some 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 and impair the Department's relationship with its portfolio Ministers when providing 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;
    - Information contained in a Ministerial Brief or Submission is prepared solely for the intended audience of an agency's portfolio Minister. It is important to maintain confidentiality between any agency and its portfolio Ministers to enhance the level of trust that exists within the uniqueness of that relationship. Disclosure of information contained in these documents could reasonably be expected to prejudice the Department's ability to maintain the required level of confidentiality and resultant trust that is required in such a relationship. This prejudicial effect would impair that

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relationship, including the need for the continuity of frankness, candour and completeness in the advice and commentary contained in such briefing material. Any prejudice or impairment to this aspect of the relationship, including the introduction of a chilling effect created by a precedent of disclosure, would weigh heavily against disclosure.

- could reasonably be expected to prejudice the effectiveness of the assessment of grant processes and the outcomes of such processesin the future;
    - The disclosure of information to prospective future grant applicants could reasonably be expected to provide them with insight into a grant process which would enable those applicants to tailor their grant applications in a way which would compromise the integrity of the future grant application process.

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 exemption 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 or exempt material and allows an agency to delete such material from a document.

(a) 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 for release to you in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

(i) 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.

(ii) Document 4 contains information at the commencement of the email chain which exists for administrative purposes only, and does not contain any information which substantively relates to the subject matter of your request.

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(b) As I decided to grant you partial access to the information you have requested, I have prepared an edited copy of the documents being released by deleting the exempt information from the documents under section 22(1)(a)(i) of the FOI Act.

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.

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, the Department may also publish the released material on its Disclosure Log. The Department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the Department's Disclosure Log can be found here: 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)

s22(1)(a)

A/g Assistant Secretary
Regional Programs Branch
Regional Development and Local Government Division

Date: 21 February 2023

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ATTACHMENT A.

SCHEDULE OF DOCUMENTS FOI 23-133

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1	09 Nov 22	MS22-002069 - signed	Access granted in part	s22 s47C s47E(d)
2	19 Dec 22	MS22-002143 – Signed sub and letters	Access granted in part	s22 s42 s47C s47E(d)
2.1	19 Dec 22	MS22-002143 – Attachment C	Access granted in full	
2.2	19 Dec 22	MS22-002143 – Attachment D	Access granted in part	s42 s47C s47E(d)
2.3	19 Dec 22	MS22-002143 – Attachment E	Access granted in full	
3	25 Nov 22	Email: SCP Round Eight guidelines package	Access granted to the relevant information in full	s22
3.1		Attachment: Factsheet	Access granted in full	
3.2		Attachment: Frequently Asked Questions	Access granted in full	
4	9 Nov 22	Email: MS22-002069 - Stronger Communities Programme	Access granted to the relevant information in full	s22
5	6 Jan 23	Email: Update on Stronger Communities Programme Round Eight	Access granted in part	s22 s47C s47E(d)

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ATTACHMENT B.

YOUR REVIEW RIGHTS

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

Internal review

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While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Infrastructure, Transport, Regional Development, Communications and the Arts as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

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.

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