



## Australian Government

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

Our reference: FOI 23-140

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

#### FOI 23-140 - Notice of Decision

I refer to your request of 24 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
- submissions from other Commonwealth Agencies consulted about documents which contain information concerning them

### 3 Scope of your request

You requested access to:

*...all documentation related to 5G towers, panels, equipment, installation.*

*Specifically requesting the following documents;*

- Health and safety risk assessments*
- Environmental impact analysis*
- Insurance policies for the equipment*

I note the Department contacted you on 3 February 2023 to clarify the scope of this request, however no response was received. Accordingly, I as decision maker have chosen to take what I consider to be the most reasonable interpretation of the scope, that is:

All documentation related to:

- Health and safety risk assessments
- Environmental impact analysis
- Insurance policies for the equipment

Of 5G towers, panels, equipment, installation.

### 4 Background

The information you have requested relates to matters that are not managed by the Department.

Much of the information the department holds has been provided by other agencies, and is also publicly available. In order to assist you, we have prepared a detailed response which includes links to the publicly available information at **ATTACHMENT B**. This response sets out the different roles and responsibilities of Commonwealth agencies in regulating the safety of 5G.

### 5 Decision

I have identified 14 documents (including attachments) that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in six documents
- grant partial access to six 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**.

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

## 6 Finding of facts and reasons for decision

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

### 6.1 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 the 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 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 the parts of the documents marked 's47C' along with 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 embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I decided the parts of the documents marked 's47C along with 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.

## 6.2 Section 47F – Documents affecting personal privacy

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

### Personal Information

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

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

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

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

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

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

I note 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

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 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 individuals during the course of making my decision.

For the reasons outlined above, I decided 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.

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

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - I note 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
- 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 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 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.

### **6.4 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 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.

## **7 Legislative provisions**

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

## **8 Your review rights**

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



## 9 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



Dr Jason Ashurst  
Assistant Secretary  
Digital Inclusion and Sustainable Communications Branch  
Communications Infrastructure Division

Date: 9 March 2023

## ATTACHMENT A

## SCHEDULE OF DOCUMENTS FOI 23-140

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	2	4/12/2019	Email Subject: FW: 5G Liability misinformation	Access granted in part  Attachment not provided as it is publicly available via <a href="#">SONAR 2019: New emerging risk insights   Swiss Re</a>	s47F s22
2.	1	21/10/2020	Letter Minister Hunt to Minister Fletcher – 5G inquiry response – ref ARPANSA	Access granted in full	
3.	4	29/05/2020	Email Subject: FW: Draft response to Inquiry into 5G in Australia report	Access granted in part	s47F s47C s22
4.	-	07/07/2020	'ARPANSA input Recommendation 10 response 27 July 2020	Access refused	s47C
5.	3	11/06/2020	Email Subject: RE: Draft response to Inquiry into 5G in Australia report	Access granted in part	s47F s47C s22
5.1	-	11/06/2020	<b>Attachment to Document 6</b> Recommendation positions.docx	Access refused	s47C
6.	2	29/11/2019	Sub summaries 5G hearing	Access granted in full to relevant information	s22
7.	2	25/11/2019	Public hearing – background information	Access granted in part	s47F s22
8.	8	25/11/2019	Submission Summary – Deployment	Access granted in part	s47C s22
9.	1	18/11/2019	EME – Talking points	Access granted in full	
10.	39	15/11/2019	5G Inquiry Submissions Summaries	Access granted in full to relevant information	s22

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
11.	2	18/10/2019	House of Representatives 5G Inquiry - EME quick reference information	Access granted in full	
12.	3	23/05/2019	Email Subject: FW: FYI – Triple J Hack – Is 5G dangerous?	Access granted in full to relevant information	s22
12.1	4	22/05/2019	<b>Attachment to Document 12</b> Brief – 5G Report on Hack.docx	Access granted in part	s47C

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

## ATTACHMENT B

## ADMINISTRATIVE RESPONSE

### Deployment of telecommunications infrastructure

The location and timing for the deployment of telecommunications infrastructure are commercial business decisions made by telecommunications companies. The Australian Government does not have a role in these decisions, nor does the Government approve the deployment of infrastructure at a particular site.

Telecommunications companies have powers under Schedule 3 of the *Telecommunications Act 1997* (the Act) to access land to inspect, install 'low-impact' facilities, and maintain telecommunications facilities, and immunity from some state and territory laws when doing so, such as planning laws.

Low-impact facilities are those that:

- are essential to the efficient operation of telecommunications networks
- have low visual impact, and
- are unlikely to cause significant community disruption during installation or operation.

These laws encourage telecommunications companies to roll out networks using components that fall within strict type, size, colour and location limitations. For example, telecommunications companies use these powers to install pillars and antennae used to deliver landline and mobile communications services to the community.

### *Environmental impact*

Telecommunications companies are also prevented from installing low-impact facilities in areas of environmental significance. These types of areas can include areas that may be declared as having environmental significance in Commonwealth legislation, a listed international agreement, designated for nature conservation, if the area includes a place, building or thing entered in a heritage conservation register, or is identified as being of significance to Aboriginal or Torres Strait Islander people, in accordance with their traditions.

Before a mobile phone base station is built, a report is produced that shows the predicted maximum levels of EME near ground level around the new facility. The Environmental EME report must consider the combined EME from both existing and proposed facilities at the site. It should be noted that predicted EME levels are for a base station operating at its highest capacity and assumes that all transmitters are working at full rated power. In reality, base stations typically operate below full rated power levels. It is a requirement of the Industry Code that a copy of this report be included in any notification materials sent to interested or affected persons. This report and other information about telecommunications facilities may also be accessed from [www.rfnsa.com.au](http://www.rfnsa.com.au).

### *Community consultation*

The Australian Government expects telecommunications companies to engage with communities in a meaningful and sensitive way about proposed deployments. The Industry Code for Mobile Phone Base Station Deployment C564:2020 (the Industry Code) sets out processes that mobile carriers should follow when installing low-impact facilities. The Industry Code is designed to ensure that stakeholders are advised before a mobile phone base station is constructed, and that council and community views are taken into account.

Approvals for the installation of free standing towers and poles to support telecommunications equipment for mobile phone base stations or fixed wireless internet generally fall under the relevant State and Territory planning laws. Telecommunications companies are required to follow the processes for community and local government consultations set out in the relevant State or Territory planning scheme.

Participation in the community consultation process is the appropriate channel for raising concerns about a specific tower, including any potential impact on existing planning arrangements and broader visual amenity. The application of state planning laws to new towers and monopoles ensures local communities have a say in the construction of a proposed facility, just as they would with any other major construction activity. Concerns about a state or territory's planning scheme should be raised with the relevant state or territory government. The Australian Government is not involved in matters relating to local or state government planning processes.

### **RFNSA website**

Information about proposed and current telecommunications facilities is available on the Radio Frequency National Site Archive (RFNSA) website at [www.rfnsa.com.au](http://www.rfnsa.com.au). This website is managed by the Australian Mobile Telecommunications Association. You can subscribe through this website to receive information about future installations of telecommunications equipment at a particular site or area.

### **5G and electromagnetic energy (EME)**

The role of the Department in 5G does not include conducting and/or interpreting scientific studies, however, for your information I have included some general information about 5G and electromagnetic energy, and how the safety of 5G is regulated in Australia.

The effects of electromagnetic energy (EME) exposure are the subject of extensive and rigorous scientific study around the world. The Australian Government strictly regulates EME emissions to protect the health and safety of all members of the public, while allowing the community to benefit from modern telecommunications.

### **5G: Next Gen Future**

The House of Representatives Standing Committee on Communications and the Arts completed its inquiry into the deployment, adoption and application of 5G in Australia and released its report in March 2020, available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Communications/5G/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/5G/Report).

The Australian Government's response was published in November 2020 and is available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Communications/5G/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Communications/5G/Government_Response).

### **ARPANSA science on EME exposure**

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) provides advice to the Australian Government, including the Department of Health and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) on radiation protection.

In 2021, ARPANSA updated its Standard for *Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz* (2021) (the Standard) based on the most up-to-date Australian and international peer-reviewed research into EME. The Standard is informed by guidelines published by the International Commission on Non-ionizing Radiation Protection (ICNIRP) and endorsed by the WHO. It also includes new restrictions specific to technologies like 5G. ARPANSA consulted publicly in developing the new Standard and provided extensive information explaining the changes.

The Standard protects people of all ages and health status against all known adverse health effects from exposure to EME by specifying emission levels that telecommunications services must operate below. Because of this requirement, there is no particular advantage in requiring transmitters to be located any particular distance from residential areas.

We recommend contacting ARPANSA directly to discuss any further concerns you may have about 5G. ARPANSA operates a program where the public can talk with scientific experts on EME exposure – this program can be accessed online at [www.arpansa.gov.au/contact-us/talk-to-a-scientist](http://www.arpansa.gov.au/contact-us/talk-to-a-scientist).

ARPANSA also provide information sessions, such as the following:

- Forum on 5G in Glenhaven – Julian Leaser MP and ARPANSA – March 2021 (health and safety) available at [www.youtube.com/watch?v=5c6WmwLJWis](http://www.youtube.com/watch?v=5c6WmwLJWis)
- ARPANSA National Science Week presentation ‘Mobile phones and health’, available at [www.arpansa.gov.au/news/arpansa-host-online-event-mobile-phones-and-health](http://www.arpansa.gov.au/news/arpansa-host-online-event-mobile-phones-and-health)

Further information about the steps taken by ARPANSA in developing its Standard are set out on its website at [www.arpansa.gov.au/developing-arpansas-radiofrequency-safety-standard](http://www.arpansa.gov.au/developing-arpansas-radiofrequency-safety-standard). ARPANSA can be contacted directly to discuss the Standard by calling 1800 022 333.

### **ACMA - EME rules for the communications industry**

The Australian Communications and Media Authority (ACMA) sets rules for the communications industry to follow based on ARPANSA’s Standard. These rules maintain EME at safe levels and the ACMA actively monitors compliance with these rules.

You may also be interested to know the ACMA is auditing EME emissions from a selected sample of representative sites across Australia, and have compared their results against both the ARPANSA safety limit and carriers’ predicted EME assessments. ACMA’s measurements have to date found all sites tested are well below the safety limit specified in the Standard and significantly lower than the carriers’ predicted levels. ACMA’s findings, methodology and previous reports are available at [www.acma.gov.au/publications/2022-08/guide/eme-checker](http://www.acma.gov.au/publications/2022-08/guide/eme-checker).

More information about the ACMA’s regulation of EME is available at [www.acma.gov.au/our-rules-eme](http://www.acma.gov.au/our-rules-eme) or by calling 1300 850 115.

### **Further information – research, regulation and safety of EME**

The department provides information about the research, regulation and safety of EME from telecommunications services and infrastructure on its resource hub at [www.eme.gov.au](http://www.eme.gov.au). Further information is available by emailing [eme@communications.gov.au](mailto:eme@communications.gov.au).

### **ABC audio show transcript**

From time to time, TV shows such as the ABC will broadcast information about 5G. For example, ABC Radio National’s Great Moments in Science program with Dr Karl Kruszelnicki broadcast shows on 4 and 11 June 2019 ‘5G hysteria is coming’ and ‘5G hysteria is coming: part 2’, available at <https://www.abc.net.au/radionational/programs/greatmomentsinscience/dr-karl-5g-hysteria-cancer-radiation/11794734> and <https://www.abc.net.au/radionational/programs/greatmomentsinscience/5g-hysteria-cancer-dr-karl-part-2/11810730>.

### **Insurance**

Your request asked about insurance policies for 5G towers, panels, equipment and installation. We note the Swiss Re Institute produces annual reports on new and emerging risks. For example, its 2019 report referred to an increased risk of individuals making liability claims associated with 5G mobile networks due to concerns about potential negative health effects from EME. The 2019 report also referred to an increased risk of espionage and security breaches affecting 5G mobile networks (see page 29 ‘Off the leash – 5G mobile networks’). Further information is available at [www.swissre.com/institute/research/sonar/sonar2019.html](http://www.swissre.com/institute/research/sonar/sonar2019.html).

## ATTACHMENT C

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-154

s22(1)(a)(ii)

Dear s22(1)  
(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 7 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 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:

*I am writing to request all and any internal correspondence related to the assessment and refusal of Model Report application MRE-2022-0000262 dated 20 December.*

*All and any of the RFI submissions to the Rover system related to this application, including those submitted by s22(1)(a)(ii) between 15 December 2022 and 20 December 2022.*

*All correspondence regarding this application too or from s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au*

*Further to below request, could you please provide all correspondence between s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; s22(1)(a)(ii) s22(1)(a)(ii) @infrastructure.gov.au; Technical Assessment & Approvals; and ADR Standards section related to MRE-2022-0000262, ADR 34, ADR 34/01, analysis, or finite analysis, ADR 29, ADR 69 between the dates of 15 December 2022 and current."*

### 4 Decision

I have identified 41 documents (including attachments) that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 40 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 exemptions identified in the schedule of documents apply to the parts of documents are set out below.

#### 5.1 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; 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 document marked 's47G' contains 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).

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.

## 5.2 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 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 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 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.

In addition, the documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided the information of unidentified staff 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](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

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

## **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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](https://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



Mitchell Cole  
Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 08/03/2023

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

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-154

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	10	6/2/23	Email Subject: <b>RE_UNECE Adoption Dates</b>	Access granted in full	
2.	1	18/11/2022	Internal Conversation Title: <b>Internal Conversation RE MRE-2022-0000262</b>	Access granted in full to relevant information	s22
3.	1	10/1/2023	Internal Conversation Title: <b>Internal Conversation RE MRE-2022-0000262a</b>	Access granted in full to relevant information	s22
4.	8	12/1/2023	Email Subject: <b>RE_ Applications exceeding service charter _SEC_OFFICIAL_</b>	Access granted in full	
5.	3	10/1/2023	Internal Email Subject: <b>RE_ Decision notice for MRE-2022-0000262 seeking an approval under the Road Vehicle Standards (RVS) legislation _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
5.1	3	Undated	<b>Attachment to Document 5</b> WIDC23401A (2).pdf	Access granted in full	
5.2	2	Undated	<b>Attachment to Document 5</b> ECDC23402A (1).pdf	Access granted in full	
5.3	6	22/11/2022	<b>Attachment to Document 5</b> ECDC3401B (2).pdf	Access granted in full	
5.4	2	Undated	<b>Attachment to Document 5</b> ECDC23402A Final RFI.pdf	Access granted in full	
5.5	6	22/11/2022	<b>Attachment to Document 5</b> ECDC3401A Initial Analysis.pdf	Access granted in full	
6.	3	24/1/2023	Internal email Subject: <b>Att ROSS_ FW_ Contact us - RVS - Other _SEC_OFFICIAL_.msg</b>	Access granted in full	
6.1	6	19/01/2023	<b>Attachment to Document 6</b> email-letter_0.pdf	Access granted in full	

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
6.1.1	2	20/12/2022	<b>Attachment to Document 6.1</b> 19012023093257.pdf	Access granted in full	
6.2	3	12/2021	<b>Attachment to Document 6</b> guidance-note-requesting-priority-assessment-of-an-rvs_application-v1.0-final_0.pdf	Access granted in full	
7.	1	25/1/2023	Internal Email Subject: <b>ADR 34_01</b> <b>_SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
7.1	5	25/11/2022	<b>Attachment to Document 7</b> READ ONLY - ROV22#524334DOC MRE-2022-0000345-Other method-RVS legislation-Technical analysis-R353401A.pdf 2.PDF	Access granted in full	
8.	1	24/01/2023	Internal Conversation Title: <b>Internal Conversation RE Finite Element Analysis.msg</b>	Access granted in part	s22 s47G
9.	5	2/2/2023	<b>Portal View – MRE-2022-0000262 RFI Timeline.pdf</b>	Access granted in full	
10.	1	13/2/2023	<b>RFI Audit History - MRE-2022-0000262.PNG</b>	Access granted in full	
11.	1	13/2/2023	<b>RFI Uploads - MRE-2022-0000262 - RM Workspace.PNG</b>	Access granted in full	
12.	1	15/2/2023	<b>RFI Response - MRE-2022-0000262-1-2.PNG</b>	Access granted in full	
13.	1	15/2/2023	<b>RFI Response - MRE-2022-0000262-1-11.PNG</b>	Access granted in full	
14.	2	3/2/2023	<b>Internal Conversation RE Inability to respond to RFI.msg</b>	Access granted in full to relevant information	s22
15.	1	1/2/2023	<b>Internal Conversation RE email response.msg</b>  <i>R. Whyley</i>	Access granted in full to relevant information	s22

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
16.	9	1/2/2023	Internal Email Subject: <b>1-2-23 - RE_ UNECE adoption dates _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
16.1	1	1/02/2023	<b>Attachment to Document 16</b> Proposed Response	Access granted in full	
16.2	1	1/03/2023	<b>Attachment to Document 16</b> Compliance Method - RVS legislation	Access granted in full	
17.	10	3/2/2023	Internal email Subject: <b>3-2-23 - FW_ UNECE adoption dates _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information  Attachment MRE-2022-0000262.pdf not provided as it is a duplicate of Document 9	s22
18.	7	19/1/2023	Internal email Subject: <b>19-1-23a - RE_ UNECE adoption dates _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
19.	2	31/1/2023	<b>Internal Conversation RE proposed response.msg</b>	Access granted in full to relevant information	s22
20.	3	15/2/2023	Internal Email Subject: <b>FW_ Decision notice for MRE-2022-0000262 _SEC_OFFICIAL_.msg</b>	Access granted in full  Attachment ECDC23402A.pdf not provided as it a duplicate of Document 5.2	
20.1	1	Undated	<b>Attachment to Document 20</b> ECDC22901A.pdf	Access granted in full	
20.2	1	Undated	<b>Attachment to Document 20</b> ECDC26901A.pdf	Access granted in full	
21.	3	10/1/2023	Internal email Subject: <b>Internal - FW_ UNECE adoption dates- GF_SEC_OFFICIAL_.msg</b>	Access granted in full	



Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
22.	2	6/2/2023	Internal email Subject: <b>RE_ Proposed wording _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
23.	1	2/2/2023	<b>Internal Conversation - Brief.msg</b>	Access granted in full	
24.	1	6/2/2023	<b>Response Draft - Internal Conversation.msg</b>	Access granted in full	
25.	9	3/2/2023	Internal email Subject: <b>FW_ UNECE adoption dates _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information  Attachment MRE-2022-0000262.pdf not provided as it is a duplicate of Document 9	s22
26.	10	10/2/2023	Internal email Subject: <b>Drafted Response - FW_ UNECE adoption dates _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
27.	2	16/12/2023	Internal Email Subject: <b>MRE-2022-0000262 - Refuse to Approve - Assessment Notes _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22
28.	2	15/11/2022	Internal email Subject: <b>FW_ Applications due to 2 December _SEC_OFFICIAL_.msg</b>	Access granted in full to relevant information	s22

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-076

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 10 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:

*documents within the department that relate to any of the following organizations and their related subsidiaries, this request for documents includes, but is not limited to, emails (and attached documents) or letters to or from these organizations, and notes or minutes of meetings between such organizations and the department, I am only seeking documents created from February 2020 to now.*

- *Federal Chamber of Automotive Industries (FCAI)*
- *Toyota*
- *Mazda*
- *Mitsubishi*
- *Hyundai/Kia*
- *Ford*
- *MG*
- *Isuzu*
- *Nissan*
- *Subaru*
- *Volkswagen*
- *Volvo Cars/Geely*

*To further narrow down the scope of this request, I am only seeking documents that relate to the National Electric Vehicle Strategy or fuel efficiency standards, or documents that include any of these keywords (or reasonable variations):*

- *Climate*
- *Emissions*
- *Electric*
- *Phase out*
- *Technology*
- *Fuel efficiency*
- *CO2 standards*
- *CO2 targets*
- *Hybrid.*

### **3.1 Clarification/Modification of scope of request**

On 8 December 2022 following consultation with you, you agreed to modify the scope of your request to the exclude following:

- *emails that deal with the administration of the GVG as they are administrative in nature and the outcome is made public when data is published on the GVG*
- *documents relating to noxious emissions and associated fuel quality changes (i.e. include only documents relating to CO2 emissions)*

## **4 Decision**

I have identified 74 documents that are relevant to your request. I am satisfied that the documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to 17 documents
- grant partial access to 38 documents
- refuse access to 19 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 relevant documents 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(2) of the FOI Act provides that a document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which section 34(1) applies.

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

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

Paragraphs 27-29 of the Cabinet Handbook state:

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

I have had regard to the circumstances in which the document marked 's34(2)' in the schedule was an extract from a document 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 document marked 's34(3)' in the schedule and am satisfied that it contains information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

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

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

## 5.2 Section 37 - documents affecting enforcement of law and protection of public safety

Section 37(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure would, or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law.

Paragraph 5.80 of the FOI Guidelines states that for the purposes of this exemption, 'law' means a law of the Commonwealth or of a State or a Territory. It encompasses both criminal and civil law.

In addition, paragraph 5.81 of the FOI Guidelines states that section 37 concerns the investigative or compliance activities of an agency and the enforcement or administration of the law, including the protection of public safety. The exemption applies where an agency has a function connected with investigating breaches of the law, its enforcement or administration.

For the purposes of sections 37(1)(a) and 37(1)(b) of the FOI Act, paragraph 5.82 of the FOI Guidelines states that the process of upholding or administering a law extends to the work of agencies in administering legislative schemes and requirements, monitoring compliance and investigating breaches.

Paragraph 5.91 of the FOI Guidelines states that this provision is intended to protect the identity of a confidential source of information, and that it is the source, rather than the information, which is confidential. Paragraph 5.92 of the FOI Guidelines states that the exemption applies where:

- the information in question may enable the agency responsible for enforcing or administering a law to enforce or administer it properly
- the person who supplies that information wishes his or her identity to be known only to those who need to know it for the purpose of enforcing or administering the law
- the information was supplied on the understanding, express or implied, that the source's identity would remain confidential.

I am satisfied that the documents marked 's37(1)(b)' in the schedule contain information which would enable the Department to enforce or administer law; the person who supplied that information wishes their identity to be known only to those who need to know it for the purposes of enforcing or administration that law, and that the information was supplied on the understanding that the identity of the source would remain confidential.

In relation to the test *would or could reasonably be expected*, paragraphs 5.16 to 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 the information marked 's37(1)(b)' would, or could reasonably be expected to, disclose, or enable a person to ascertain, the existence or identify a confidential source of information. I am satisfied that the information was provided to the Department by the source under a reasonable expectation that their identity would be kept confidential. The information is held by the Department on a strict need-to-know basis, and access to the information has been restricted within the Department. I am satisfied that in the event that this information is disclosed, there is a real, significant or material possibility of the confidential source of information being disclosed.

For the reasons outlined above, I decided that the documents marked 's37(1)(b)' in the schedule are exempt from disclosure under section 37 of the FOI Act.

### 5.3 Section 42 - Documents subject to legal professional privilege

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines state:

- 5.127 The FOI Act does not define LPP for the purposes of the exemption. To determine the application of this exemption, the decision maker needs to turn to common law concepts of LPP.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that the parts of the documents marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence
- the communication was brought into existence for the dominant purpose of giving or receiving legal advice
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that the parts of the documents marked 's42' are exempt from disclosure under section 42 of the FOI Act.

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

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

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

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

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



As notified to you on 6 January 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

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

## 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 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.

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 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.

## 5.6 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 6.120 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 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 about a number of individuals.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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 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 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.

## 5.8 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.

### **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
- 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 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 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
- 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.

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.

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](http://www.legislation.gov.au/Series/C2004A02562).



## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

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

Date: 10 March 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-076

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	2020	US and EU standards vs FCAI	Access granted in full	
2.	Feb 20	MC Input on FCAI AAA and fuel quality proposals	Access granted in full	
3.	23 Mar 20	Teleconference with Volkswagen Group	Access granted in part	47F
4.	July 20	FCAI CO2 reduction and reporting presentation by Technical Director	Access granted in full	
5.	July 20	FCAI Presentation by Chief Executive	Access granted in full	
6.	July 20	FCAI Voluntary CO2 Standard Summary	Access granted in full	
7.	2 Jul 20	Email: Mazda 2 emission compliance information	Access granted in part	47F
8.	14 Jul 20	Email: Meeting with the FCAI	Access granted in part	47F
9.	23 Jul 20	MS20-001189	Access granted in part	47F
10.	30 Jan 20	Email: FCAI Voluntary CO2 emissions standard	Access granted in part	47F
11.	4 Dec 20	Email: Vehicle Supply	Access granted in part	47F
12.	21 Dec 20	Sustainable Transport Input for FCAI meeting	Access granted in full	
13.	16 May 21	Email: HPE CM: Supreme Court finding - implication for ADR 82/02	Access granted in part	22, 47F
14.	11 Jun 21	Email: PMO RFA	Access granted in part	34(2), 34(3), 47C, 47F
14.1		Attachment: Email: Request: Analysis on stakeholder views on emissions standards	Access granted in part	47F
14.2		Attachment: Response to Request - Analysis on stakeholder views on emissions standards	Access refused	47C
15.	1 Jun 21	Email: HPE CM: RE: Supreme Court finding - implication for ADR 82/02	Access granted in part	47C
16.	14 Jul 21	Email: HPE CM: FW: Mis(labelling): Manufacturer and dealer liability for misrepresentations	Access granted in part	47F
17.	16 Aug 21	Email	Access refused	37(1)(b), 47
18.	9 Aug 21	Email	Access refused	37(1)(b), 47
18.1		Attachment: Briefing notes	Access refused	37(1)(b), 47
19.	4 Nov 21	Email: Action (by COB Wednesday): Information on Opportunities for Emissions Reforms	Access granted in part	47F
19.2		Attachment: Vehicle Emissions in Australia presentation	Access granted in full	
20.	17 Dec 21	Att B – MC21-011685	Access refused	37(1)(b), 47
21.	15 Feb 21	Email: Meeting brief - FCAI Director of Policy and Advocacy.docx	Access granted in part	47F

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
21.1		Meeting brief – FCAI Director of Policy and Advocacy	Access granted in part	47F
22.	10 Mar 22	Email: Green Vehicle Guide update	Access granted in part	47F
23.	20 Apr 22	Email: Toyota x Office of Future Transport - additional discussion items and attendees list	Access granted in part	47F
24.	27 Apr 22	Meeting notes Toyota and Office of Future Transport	Access granted in part	47F
25.	27 Jul 22	Email	Access refused	47
25.1		Attachment	Access refused	47
25.2		Attachment: CO2 Research Overview	Access granted in full	
26.	31 May 22	Email: Green Vehicle Guide website update	Access granted in part	47F
27.	June 22	Green Vehicle Guide Update presentation	Access granted in part	47F
28.	27 Jul 22	Email: Feedback from projections meeting with the FCAI	Access granted in part	47F
29.	11 Jul 22	Email: Update to Green Vehicle Guide	Access granted in part	47F
30.	4 Jul 22	Email:	Access refused	37(1)(b), 47
30.1		Attachment:	Access refused	37(1)(b), 47
31.	5 Jul 22	Email: CONFIDENTIAL	Access refused	37(1)(b), 47
32.	1 Aug 22	Email: MB22-000451	Access granted in part	47F
32.1		Attachment: MB22-000451	Access granted in part	47F, 22
33.	26 Aug 22	Letter from Toyota to the Department	Access granted in part	47G
34.	30 Aug 22	Email: MS22-000xxx - Vic ruling on label data 290822.docx	Access granted in part	47F
34.1		Attachment: MS22-000xxx	Access refused	47C, 47E(d), 47F
35.	1 Aug 22	Email: EC22-000676 Dep Sec meeting with Toyota.docx	Access granted in part	47F
35.1		Attachment: EC22-000676	Access granted in part	47F
36.	18 Aug 22	Email: Reminder - RSVP for FCAI and AADA Automotive Vehicle Emissions Forum	Access granted in part	47F
36.1		Attachment: Automotive Vehicle Emissions Forum Program	Access granted in full	
37.	28 Sep 22	Email: 22#184422DOC Meeting Brief - FCAI - vehicle industry electrification briefing.DOCX	Access granted in part	47F, 47E(d)
37.1		Attachment: FCAI presentation	Access granted in full	
37.2		Attachment: Meeting brief	Access granted in part	47F
38.	8 Sep 22	Email: Presentations from 'Driving Australia to Net Zero - Vehicle Emissions Forum'- 6 September 2022	Access granted in full	47F
39.	Sept 22	Email: URGENT CLEARANCE REQUEST - Briefing for meeting between Jim and Toyota Australia	Access refused	47C, 47E(d), 47F

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
40.	29 Sep 22	Email: Request for QA - EC22-000817	Access refused	47C, 47E(d), 47F
40.1		Attachment: Email: Request for QA - EC22-000817	Access refused	47C, 47E(d), 47F
40.2		Attachment: Draft response document	Access granted in full	
40.3		Attachment: Dep Sec Comments	Access granted in part	47C, 47F
40.4		Attachment: Draft response with edits	Access granted in full	
40.5		Attachment: Cover Sheet	Access granted in part	47F
41.	30 Sep 22	Email: Seeking your urgent assistance with a meeting brief	Access refused	47C, 47E(d), 47F
41.1		Attachment: Material for meeting	Access granted in full	
42.	7 Sep 22	Meeting: Road Vehicles Standards Legislation	Access granted in part	47F
43.	4 Oct 22	EC22-000907	Access granted in part	47C, 47E(d), 47F, 22
44.	20 Oct 22	Email: GVG Data	Access granted in part	47F
44.1		Attachment: Web Services System User Guide	Access granted in part	47F
44.2		Attachment: Data Transfer Form	Access granted in full	
44.3		Attachment: Licence Agreement	Access granted in full	
45.	17 Oct 22	Email: Corro advice - The EVC, FCAI and the National Transport Commission	Access refused	47C, 47E(d), 47F, 22
46.	13 Oct 22	Email: FCAI Catch Up	Access refused	47C, 47E(d), 47F
47.	28 Oct 22	Email: Input on key points for media	Access refused	47C, 47E(d), 47F
48.	14 Oct 22	Email: Meeting with Matthew Callachor and Andrew Willis, Toyota Australia and Secretary Jim Betts	Access refused	47C, 47E(d), 47F
49.	Nov 22	Email: FCAI query - Use of UN R154 for ADR 81/02 Certification	Access granted in part	47C, 47E(d), 47F
49.1		Attachment: Use of UN R154 for ADR 81_02 Certification	Access granted in part	47F
50.	6 Sep 22	Notes on Vehicle Emissions Forum	Access granted in full	

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-137 and FOI 23-138

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your two requests 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), specifically FOI 23-137 and FOI 23-138.

#### 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:

#### FOI 23-137

- a) *Copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the Investing in Our Communities Program;*
- b) *Draft guidelines for the Investing in Our Communities Program; and*
- c) *Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the Investing in Our Communities Program*

#### FOI 23-138

- a) *Copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the Priority Community Infrastructure Program;*
- b) *Draft guidelines for the Priority Community Infrastructure Program; and*
- c) *Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding the Priority Community Infrastructure Program.*

#### 3.1 Clarification/Modification of scope of request

On 2 March 2023, following consultation with you, you agreed to modify the scope of your request to the following:

#### FOI 23-137

- a) *Copies of any departmental briefings, but not including any attachments to the briefings that are draft guidelines, provided by the Department to the Minister for Infrastructure, Transport, Regional Development, and Local Government regarding the Investing in Our Communities Program;*
- b) *Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government, relating to the timing of Ministerial decisions regarding the Investing in Our Communities Program or the timing of Ministerial decisions regarding the Investing in Our Communities Program guidelines.*

#### FOI 23-138

- a) *Copies of any departmental briefings, but not including any attachments to the briefings that are draft guidelines, provided by the Department to the Minister for Infrastructure, Transport, Regional Development, and Local Government regarding the Priority Community Infrastructure Program;*
- b) *Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government, relating to the timing of Ministerial decisions regarding the Priority Community Infrastructure Program or the timing of Ministerial decisions regarding the Priority Community Infrastructure Program guidelines.*

## 4 Decision

I have identified 21 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 access in full to four documents
- grant partial access to 11 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.

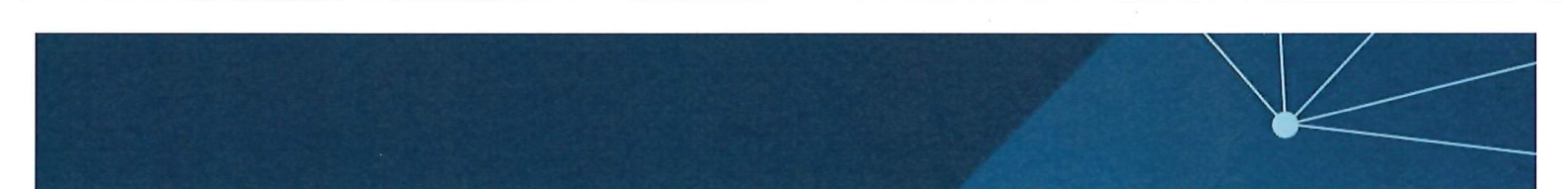
The FOI Guidelines state:

- 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.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that the parts of the documents marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence
- the communication was brought into existence for the dominant purpose of giving or receiving legal advice
- the advice was provided independently, and
- the advice provided was confidential.





For the reasons outlined above, I decided that the parts of the documents marked 's42' are exempt from disclosure under section 42 of the FOI Act.

## 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 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' 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 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.

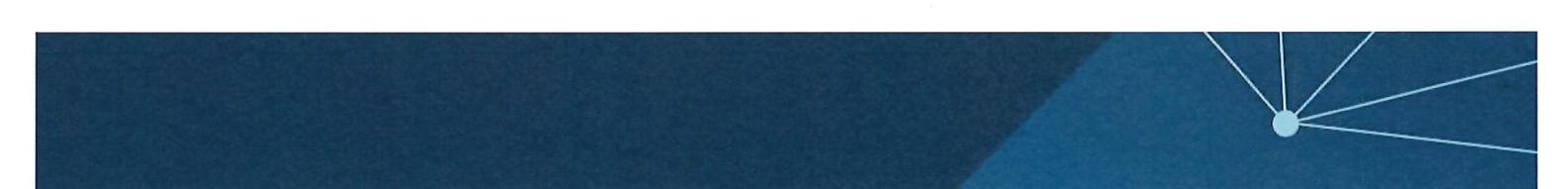
#### Factors weighing against disclosure

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 Department's ability to assess risk
- 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.

### **5.4 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](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

s22(1)(a)(ii)

Meghan Hibbert ✓  
Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division  
Date: 20/3/23

## SCHEDULE OF DOCUMENTS FOI 23-137 and FOI 23-138

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act	FOI Request Reference
1.	7 Nov 22	Submission: MS22-002079	Access granted in part	s22, 47E(d)	23-137 23-138
1.1	7 Nov 22	<b>Attachment A</b> liOC Letter to Finance Minister	Access granted in part	s42, 47E(d)	23-137
1.2	7 Nov 22	<b>Attachment B</b> liOC Program Description	Access granted in full		23-137
1.3	7 Nov 22	<b>Attachment C</b> PCIP Letter to Finance Minister	Access granted in part	s42, 47E(d)	23-138
1.4	7 Nov 22	<b>Attachment D</b> PCIP Program Description	Access granted in full		23-138
2.	19 Dec 22	Submission: MS22-002221	Access granted in part	s42, s47E(d), s22	23-137
2.1	19 Dec 22	<b>Attachment B</b> liOC – Letter to Finance Minister	Access granted in part	s42, 47E(d)	23-137
2.2	19 Dec 22	<b>Attachment C</b> liOC – Self Risk Assessment	Access granted in part	s42, s47E(d)	23-137
2.3	19 Dec 22	<b>Attachment D</b> liOC - Program design settings and Implementation Plan	Access granted in full		23-137
3.	20 Dec 22	Submission: MS22-002284	Access granted in part	s47E(d), s22	23-138
3.1	20 Dec 22	<b>Attachment B</b> Letter to Finance	Access granted in part	s47E(d)	23-138
3.2	20 Dec 22	<b>Attachment C</b> PCIP – Self Risk Assessment	Access granted in part	s42, 47E(d)	23-138
3.3	20 Dec 22	<b>Attachment D</b> PCIP – Implementation Plan	Access granted in full		23-138
4.	29 Jan 23	Submission: MS23-000047	Access granted in part	s42, 47E(d)	23-138
4.1	29 Jan 23	<b>Attachment B</b> PCIP – Letter to Finance Minister	Access granted in part	s42, 47E(d)	23-138
5	12 Dec 22	Email: Ministerial Priorities Tracker as at 16 December 2022	Access granted in full to relevant information	s22	23-137 23-138
6	20 Dec 22	Email: Standard words – liOC and PCIP	Access granted in full to relevant information	s22	23-137 23-138
7	20 Dec 22	Email: Text for election commitments	Access granted in full to relevant information	s22	23-137 23-138
8	23 Dec 22	Email: Re: Standard responses – PCIP and liOC	Access granted in full to relevant information	s22	23-137 23-138

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act	FOI Request Reference
9	16 Jan 23	Email: Ministerial Priorities Tracker as at 16 January 2023 (plus attachment)	Access granted in full to relevant information	s22	23-137 23-138
10	23 Jan 23	Email: Ministerial Priorities Tracker as at 23 January 2023 (plus attachment)	Access granted in full to relevant information	s22	23-137 23-138

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-135

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 Local Roads and Community Infrastructure Program Phase 3;*
- b) *Copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding Local Roads and Community Infrastructure Program Phase 3 extension;*
- c) *Copies of any departmental briefings provided to the Minister for Infrastructure, Transport, Regional Development and Local Government regarding Local Roads and Community Infrastructure Program Phase 4;*
- d) *Draft guidelines for the Local Roads and Community Infrastructure Program Phase 4; and*
- e) *Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding Local Roads and Community Infrastructure Program Phase 4.*

#### 3.1 Clarification/Modification of scope of request

On 9 February 2023, following consultation with you, you confirmed that the date range for documents in relation to your request is from 1 June 2022 to 23 January 2023. In addition, you agreed to modify Part E of the scope of your request to read as follows:

*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 Local Roads and Community Infrastructure Program Phase 4.*

### 4 Decision

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

I have decided to:

- grant access in full to relevant information in five documents
- 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**.

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 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 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.

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

### Factors weighing against disclosure

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

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

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

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

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

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally 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 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](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

Benjamin Meagher  
Assistant Secretary  
Targeted Infrastructure Programs Branch  
Road and Vehicle Safety Division

Date: 24 March 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-135

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	-	Submission: MS22-001750	Access refused	s47C
1.1	-	<b>Attachment A</b> Alternative options to deliver LRCI Commitments	Access refused	s47C
1.2	-	<b>Attachment B</b> Considerations for LRCI Program Phase 4 re-design	Access refused	s47C
2.	-	Submission: MS22-002203	Access refused	s47C
3.	10/09/2022	Email Subject: RE: Discuss future delivery of LRCI	Access granted in full to relevant information	s22
3.1	-	<b>Attachment to Document 3</b> Key Points - LRCI commitment implementation.docx	Access refused	s47C
4.	13/09/2022	Email Subject: Brief: Delivering Local Roads and Community Infrastructure (LRCI) Program commitments	Access granted in full to relevant information	s22
5.	-	Local Roads and Community Infrastructure Program Extension	Access refused	s47C
6.	14/10/2022	Email Subject: Delegations and Cab Minute/Green/Cab Sub Comparison	Access granted in full to relevant information	s22
6.1	10/2022	<b>Attachment to Document 6</b> Minute Tracker	Access granted in part	s47C s22
7.	01/12/2022	Email Subject: For information: Critical IID priorities for the MO prior to Christmas break - 01 December 2022	Access granted in full to relevant information	s22
7.1	01/12/2022	<b>Attachment to Document 7</b> 20221201 IID Portfolio Briefs-Events for MO_highlighted FINAL.xlsx	Access granted in full to relevant information	s22

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
8.	12/01/2023	Email Subject: LRCI - Phase 4 model & Extension to Eligible Construction Time Period for Phases 1, 2, & 3	Access granted in part	s47C s22

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).





## Australian Government

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

Our reference: FOI 23-136

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
- submissions from third parties consulted about documents which contain information concerning them.

### 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 round 3 of the Regional Airports Program; and
- b) Correspondence and emails between the Department and the office of the Minister for Infrastructure, Transport, Regional Development and Local Government regarding round 3 of the Regional Airports Program.

### 4 Decision

I have identified 14 documents (including attachments) that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in ten documents
- grant partial access to one document
- 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**.

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

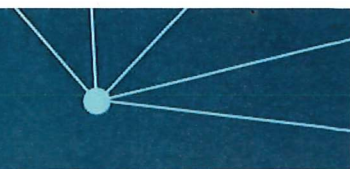
Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the 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 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 embedded in or intertwined with the deliberative content such that it is impractical to excise

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

## **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 the document marked 's47E(d)' in the schedule 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 documents marked 's47E' in the schedule 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:

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 ...

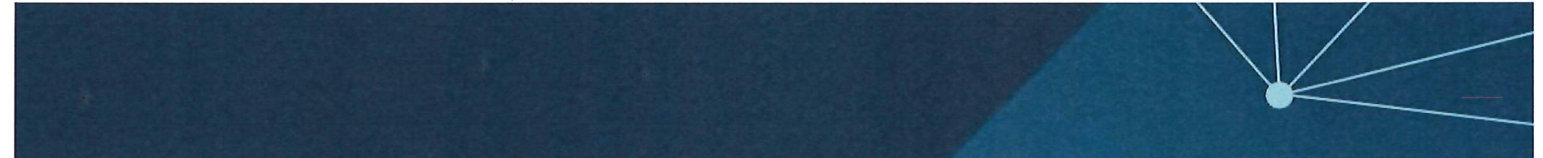
Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

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

For the reasons outlined above, I decided that the parts of the document marked 's47F' 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.

#### **5.4 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 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 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 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

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 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

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

**Date: 23/03/2023**



## SCHEDULE OF DOCUMENTS FOI 23-136

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	1	25/11/2022	Email Subject: Minister C King Weekly Brief and Correspondence Report - 25 November 2022	Access granted in full to relevant information	s22
1.1	2	25/11/2022	<b>Attachment to Document 1</b> Minister C King Weekly Brief and Correspondence Report – 25 November 2022	Access granted in full to relevant information	s22
2.	8	01/12/2022	MS22-001371 Subject: Regional Airports Program (RAP) Round 3 Funding Recommendations	Access granted in part	s22 s47C s47F
2.1	-	-	<b>Attachment to Document 2</b> Attachment A: List of recommended projects for funding under Round three	Access refused	s47C
2.2	-	-	<b>Attachment to Document 2</b> Attachment B: List of not recommended and ineligible projects	Access refused	s47C
2.3	1	Not dated	<b>Attachment to Document 2</b> Attachment D: PGPA Act, Rules and CGRGs	Access granted in full	
2.4	-	-	<b>Attachment to Document 2</b> Attachment E: Overview of the assessment process	Access refused	s47E(d)
2.5	21	22/03/2022	<b>Attachment to Document 2</b> Attachment F: RAP Round 3 program guidelines	Access granted in full	
3.	3	12/01/2023	Email Subject: RE: Regional Airports Program Round 3 - media announcement	Access granted in full to relevant information	s22
3.1	1	05/12/2022	<b>Attachment to Document 3</b> Email Subject: Regional Airports Program Round 3 - media announcement	Access granted in full to relevant information	s22

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
3.1.1	1	Not dated	<b>Attachment to Document 3.1</b> NOV22 - MR - C KING - REGIONAL AIRPORTS PROGRAM R3 SUCCESSFUL PROJECTS.docx	Access granted in full to relevant information	s22
3.1.2	3	Not dated	<b>Attachment to Document 3.1</b> TPs and Q&A - Regional Airports Program (Round 3).DOCX	Access granted in full	
3.1.3	4	Not dated	<b>Attachment to Document 3.1</b> Successful RAP Round 3 projects.docx	Access granted in full	
4.	3	12/01/2023	Email Subject: RE: Regional Airports Program Round 3 - media announcement	Access granted in full to relevant information	s22

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-139

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
- submissions from third parties consulted about documents which contain information concerning them

#### 3 Scope of your request

You requested access to:

*a breakdown of each expense item for the event that was mentioned in a Question on Notice, Question Number 343, as well as external and internal correspondence/communications relating to the event, which includes access to any emails, instant messages, memos, file notes, and meeting minutes*



### 3.1 Clarification/Modification of scope of request

On 3 February 2023, following consultation with you, you agreed to narrow the emails component of your request to the following topics only:

- *Procurement of the event*
- *Approvals*
- *Processing payment*

## 4 Decision

I have identified 76 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 47 documents
- grant access in full to 15 documents
- grant partial access to 14 documents

A schedule setting out the documents relevant to your request, with my decision in relation to 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 47 - Documents disclosing commercially valuable information

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:
- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value

- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine “arm’s-length” buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

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

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

As notified to you on 14 February 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

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

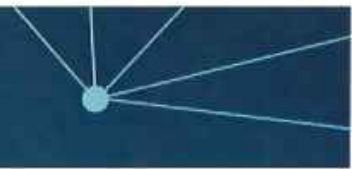
## 5.2 Section 47E - Documents affecting certain operations of agencies

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 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' 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 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 management of event operations of an agency.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

Daniel Caruso  
Assistant Secretary  
Post, International Telecoms and ACMA Branch  
Communications Services & Consumer Division

Date: 23/3/22



## SCHEDULE OF DOCUMENTS FOI 23-139

Doc Ref	Date of document	Description of document	Decision on access	Provision of FOI Act
1	01/09/2022	Invoice from the provider of venue and catering	Access granted to relevant information in full	22
2	17/08/2022	Invoice from Audiovisual Service provider	Access granted to relevant information in full	22
3	10/08/2022	Quote from Audiovisual Service provider	Access granted in part	47, 22
4	19/07/2022	Email: Quote request sent to selected venue/catering providers	Access granted to relevant information in full	22
5	5/08/2022	Email: between DITRDCA and APH Catering and Events	Access granted to relevant information in full	22
6	19/07/2022	Email: National Press Club (NPC) – reply to the request for a quote	Access granted to relevant information in full	22
6.1		Attachment 1 – Catering & Beverages	Access granted in full	
6.2		Attachment 2 – Conference Packages	Access granted in full	
7	20/07/2022	Email: APH Catering and Events re Quote request	Access granted to relevant information in full	22
7.1		Attachment 1 - APH Catering Kit	Access granted in full	
8	20/07/2022	Email: Realm Hotel re request for a quote	Access granted to relevant information in full	22
8.1		Attachment 1 – Beverages	Access granted in full	
8.2		Attachment 2 – Canapes	Access granted in full	
8.3		Attachment 3 – Morning and afternoon tea	Access granted in full	
9	12/08/2022	Email: between DITRDCA and NPC re Quote request	Access granted to relevant information in full	22
10	22/07/2022	Email: re AV at Hyatt for DITRDCA	Access granted in part	47, 22
11	21/07/2022	Email: Hyatt re Quote request	Access granted in part	47, 22
11.1		Attachment 1 – Beverage package	Access granted in full	
11.2		Attachment 2 – Canape Menu	Access granted in full	
12	01/08/2022	Email: Hyatt re Quote request	Access granted in part	47, 22
12.1		Attachment 1 - Event Canape Menu 2022 with price updated	Access granted in part	47
13	02/08/2022	Email: Hyatt re Quote request	Access granted in part	47, 22
13.1		Attachment 1 - Beverage Menu 2022 - Updated	Access granted in part	47
14	02/08/2022	Email: Hyatt re Quote request	Access granted in part	47, 22

Doc Ref	Date of document	Description of document	Decision on access	Provision of FOI Act
15	26/07/2022	Email: Elite Event Technologies re initial quote on AV equipment	Access granted to relevant information in full	22
15.1		Attachment A – Initial quote from Elite Event Technology dated 26/07/2022	Access granted in part	47, 22
16	3/08/2022	Email: APH Events re Quote request	Access granted to relevant information in full	22
16.1		Attachment 1 – APH second floor plan	Access granted in full	
16.2		Attachment 2 – venue photo	Access granted in full	
16.3		Attachment 3 – venue photo 2	Access granted in full	
17	3/08/2022	Email: re event venue Quote request	Access granted to relevant information in full	22
18	3/08/2022	Email: re event venue	Access granted to relevant information in full	22
19	04/08/2022	Email: APH Events to the Department re venue	Access granted to relevant information in full	22
20	05/08/2022	Email: with the Minister's Office, re hospitality approval	Access granted to relevant information in full	22
21	08/08/2022	Email: re event re event approval	Access granted to relevant information in full	22
22	09/08/2022	Email: from APH Events to the Department re event paperwork	Access granted to relevant information in full	22
22.1		Attachment 1 – APH Catering and Events Terms and conditions	Access granted in full	
22.2		Attachment 2 – Catering Kit	Access granted in full	
22.3		Attachment 3 – EVENTS Covid Safe Plan	Access granted in full	
22.4		Attachment 4 – Pass Request Form for Events	Access granted to relevant information in full	22
22.5		Attachment 5 – Loading Dock Form	Access granted to relevant information in full	22
23	11/08/2022	Email: Exchange of emails with APH Events and Catering	Access granted to relevant information in full	22
24	12/08/2022	Email: re signed approval of the event	Access granted to relevant information in full	22
24.1		Attachment – signed approval minute EC22-000606, additional email, Event Booking Request Form, and Official Hospitality Form	Access granted in part	22, 47, 47E(d)

Doc Ref	Date of document	Description of document	Decision on access	Provision of FOI Act
25	12/08/2022	Email: from Acting Dep. Sec re Additional approval request for venue hire - reception hosted by the Minister for Communications	Access granted to relevant information in full	22
26	12/08/2022	Email: APH Events and the Department re quote and event order	Access granted to relevant information in full	22
27	15 Aug 2022	Email: re quotes and arrangements	Access granted in part	47, 22
28	17/08/2022	Email: re quote, proposed dates, venue, number of attendees	Access granted to relevant information in full	22
29	18/08/2022	Email: between the Department and Elite 17-19 Aug 2022	Access granted to relevant information in full	22
30	19/08/2022	Email: seeking advice on processing the invoice	Access granted to relevant information in full	22
31	22/08/2022	Email: re processing the payments for the event	Access granted to relevant information in full	22
32	24/08/2022	Email: re seeking advice on receiving the invoice from APH Events	Access granted to relevant information in full	22
33	8/08/2022	Email: re quote, venue, confirming the date for the event	Access granted to relevant information in full	22
34	9/08/2022	Email: Old Parliament House – quote (late)	Access granted to relevant information in full	22
34.1		Attachment – Old Parliament House functions package	Access granted in full	
35	10/08/2022	Email: re Elite updated quote	Access granted in part	47, 22
35.1		Attachment 2 – proposed plan-setting of AV equipment	Access granted to relevant information in full	22
36	10/08/2022	Email: Department to Elite and APH Events re venue inspection	Access granted to relevant information in full	22
37	10/08/2022	Email: Department and APH Events re the event	Access granted to relevant information in full	22
38	12/08/2022	Email: Department and APH Events re the event including beverages selection	Access granted to relevant information in full	22
39	12/08/2022	Email: Department and APH Events re the event and submitting requested forms	Access granted to relevant information in full	22

Doc Ref	Date of document	Description of document	Decision on access	Provision of FOI Act
39.1		Attachment 1 – signed COVID safety plan	Access granted to relevant information in full	22
40	12/08/2022	Email: re updated Elite Quote- QU011589	Access granted in part	47, 22
41	15/08/2022	Email: Department to Elite re accepted quote	Access granted in part	47, 22
42	18/08/2022	Email: re taxation reporting and signed official hospitality approval form	Access granted to relevant information in full	22
43	18/08/2022	Email: Elite re payment of the invoice	Access granted to relevant information in full	22
44	18/08/2022	Email: Department and APH Events re Pass Request Form and invoice	Access granted to relevant information in full	22
45	19/08/2022	Email: to finance re processing the payment	Access granted to relevant information in full	22
46	19/08/2022	Email: to Procurement team re payment process	Access granted to relevant information in full	22
47	19/08/2022	Email: re payment technical issues Reception - processing payment	Access granted to relevant information in full	22
48	22/08/2022	Email: Department to APH Events re invoice	Access granted to relevant information in full	22
49	24/08/2022	Email: re invoice from APH Catering and Events	Access granted to relevant information in full	22
50	05/08/2022	Email: Department to Minister Office seeking feedback on possible Ministerial involvement and advice on venue	Access granted to relevant information in full	22
51	11/08/2022	Email: re internal approval of the event	Access granted to relevant information in full	22
52	11/08/2022	Email: re internal approval of the event	Access granted to relevant information in full	22
53	11/08/2022	Email: re approved event – minute signed by the delegate	Access granted to relevant information in full	22

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-142

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 27 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
- submissions from third parties consulted about documents which contain information concerning them

#### 3 Scope of your request

You requested access to:

*all ministerial briefing notes on the South East Queensland City Deal*

### 3.1 Clarification/Modification of scope of request

On 13 February 2023, following consultation with you, you agreed to modify the scope of your request to the following:

*the department's briefs to the minister regarding the South East Queensland City Deal, in the period 22 May 2022 to present*

## 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 two documents
- 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**.

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 documents are set out below.

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

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

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

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

I am satisfied that the documents 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 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.

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.

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

Section 47B(a) of the FOI Act provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

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

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

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

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

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

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

6.35 The potential damage need not be quantified, 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 47B(a) may adversely affect the administration of a continuing Commonwealth-State project.

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(a)' 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.

### **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 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
- would prejudice the attainment of outcomes of South East Queensland City Deal

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

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

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

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

### 5.4 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

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

Yours sincerely

s22(1)(a)(ii)

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

Date: 23 March 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-142

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	24 August 2022	MB22-000477– Leadership Group meeting 26 August 2022	Access granted in part	s45, s47B(a)
1.1	24 August 2022	MB22-000477 Attachment A - biographical details	Access granted in full	
1.2	24 August 2022	MB22-000477 Attachment B – meeting papers	Access refused	s45
1.3	24 August 2022	MB22-000477 Attachment C – annotated agenda	Access refused	s47B(a)
1.4	24 August 2022	MB22-000477 Attachment D – SEQ City Deal commitments and funding	Access refused	s45
1.5	24 August 2022	MB22-000477 Attachment E - 30 June 2022 letter from Mayor Peter Flannery to Minister Catherine King MP	Access refused	s45
2.	12 January 2023	MB23-000001 – Leadership Group meeting 18 January 2023	Access granted in part	s45, s47B(a)
2.1	12 January 2023	MB23-000001 - Attachment A – biographical details	Access granted in full	
2.2	12 January 2023	MB23-000001– Attachment B - annotated agenda	Access refused	s47B(a)
2.3	12 January 2023	MB23-000001 Attachment C – draft implementation plan	Access refused	s45

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-180

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### FOI 23-180 decision letter

I refer to your request of 24 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 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:

*All Ministerial Submissions and email correspondence from the Department to the Minister for the Arts, and vice versa, which relate to the launch event for the National Cultural Plan.*

## 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 one document
- grant access to relevant information in two documents
- grant partial access to three 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 relevant 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 would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

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


Paragraphs 6.33-6.35 of the FOI Guidelines also state:

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

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

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

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

- 
- adversely affect the development of future Commonwealth-State projects

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

Having regard to the above, I am satisfied that disclosure may adversely affect the development of future Commonwealth-State projects.

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

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

I am satisfied that damage that would or could reasonably be expected to occur from the disclosure of the document marked 's47B' in the schedule, based on reasonable grounds, is real, significant or a material possibility.

For the reasons outlined above, I decided that document 7 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 Section 47C – Deliberative processes

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

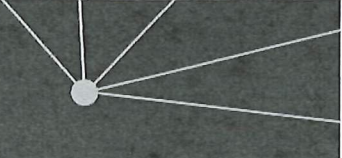
### Deliberative process

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

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

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





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

### **Deliberative matter**

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

I am satisfied that the parts of document 6 marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that parts of document 3 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, 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 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 document 7 is 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 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 documents 3 and 4 marked 's47F' include personal information about a number of individuals. This includes the names of private individuals and their direct contact details, including mobile phone numbers and personal email addresses.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

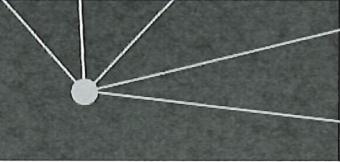
- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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



necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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

- the 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.

For the reasons outlined above, I decided that the parts of documents 3 and 4 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.



## 5.5 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 would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

### Business information

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

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

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

Document 7 contains business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

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

### Unreasonable adverse effect of disclosure

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

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

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

For the reasons outlined above, I decided that document 7 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.



## 5.6 Public interest considerations

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

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

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

### Factors favouring disclosure

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

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

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

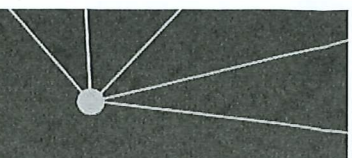
- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government
- would not inform debate on a matter of public importance, in that the content of the documents does not relate to matters of common concern or relevance to all members of the public, or a substantial section of the public
- would not promote effective oversight of public expenditure.

I note that you are not seeking access to your own personal information, and this factor is not relevant to my considerations.

### 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 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 harm the interests of an individual or group of individuals and inhibit the continued level of engagement between the Department and stakeholders vital to the National



Cultural Policy, which would have a substantial and an adverse effect on the successful implementation of this policy and the benefits that it would bring to the Australian community

- 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 adversely affect the business, commercial or financial affairs of a number of organisations or undertakings and prejudice their ability to preserve the profitability and ongoing viability their business and/or commercial affairs.

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

- (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.

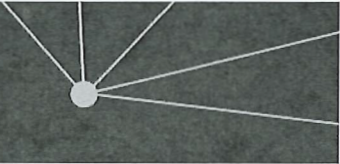
### **5.7 Section 22 – deletion of irrelevant and/or exempt material**

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 documents 1 and 5 captured by your request contain material which can reasonably be regarded as irrelevant to your request. The documents contain mobile and direct desk phone numbers of public servants. When your request was acknowledged, we notified you that this type of information would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and it has been deleted under section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

In addition, as I decided to grant you partial access to documents 3, 4 and 6, I have prepared an edited copy of these documents 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



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

Date:

31/3/23

## SCHEDULE OF DOCUMENTS FOI 23-180

Doc No.	Description of document	Decision on access	Provision of FOI Act
1.	MB23-001352 – National Cultural Policy Launch	Access granted in full to relevant information	s22
2	Attachment A: Run Sheet	Access granted in full	
3	Attachment B: RSVPs	Access granted in part	s47F
4	Attachment C: Biographies	Access granted in part	s47F
5	Attachment D: Speech	Access granted in full to relevant information	s22
6	Attachment E: Talking Points	Access granted in part	s47C
7	Attachment F: Stakeholder anticipated reactions matrix	Access refused	s47B s47E(d) s47G



## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-118

s22(1)(a)(ii)

Dear s22(1)(a)  
(ii)

### Decision on your Freedom of Information Request

I refer to your request of 30 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.

### 3 Scope of your request

You requested access to:

- *A copy of the Business case for the Shepparton Bypass*
- *Any correspondence between the Victorian State and Federal government regarding the Shepparton Bypass during the period Following the completion of the business case and the Victorian State election on 26/11/2022.*

### 4 Decision

I have identified 17 documents (including associated attachments) that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to relevant information in 15 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**.

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 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:

- (b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

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

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

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

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project

- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

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

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

6.35 The potential damage need not be quantified, <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions> - [fn28](#) but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that Document 17 as well as the relevant parts marked 's47B(b)' in Document 2, are exempt from disclosure as they contain information that was communicated in confidence by a State Government to the Department, and that there was an expectation that the information shared would remain confidential and only be used for a specific purpose, being the ongoing discussions between the State and Commonwealth Governments for the proposed delivery funding of the Project.

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

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

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

I am satisfied that the documents marked 's47B(b)' in the schedule contain information which was communicated in confidence, and that the communication was considered to be confidential at the time of the communication.

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

In making my decision, I consulted with the relevant Victorian State Government, who has provided the following submission:

*The document was provided to the Department with both the express and implied intention that it was being shared on a confidential basis and was to be used for the sole and only purpose of informing the Department of the necessary requirements for the successful delivery of the Project, including its estimated financial costs and subsequent funding requirements.*

*There was an expectation that by providing the Document to the Department it would at all times only be used for the purpose of ongoing discussions and negotiations between the Commonwealth and State Governments concerning the funding for the Project and that it would otherwise remain confidential within the Department and not be used for any other purpose.*

*Further, the Document and the information contained therein remains confidential to this day, and none of its contents have been made public, as a final decision on the Project is yet to be made, and discussions currently remain ongoing between the State and Commonwealth governments concerning the future of the Project.*

I have taken the above comments into account, as well as any further concerns raised by the State.

Furthermore, the Victorian Government has provided evidence that in accordance with the Victorian *Freedom of Information Act 1982* (Vic) (VIC FOI Act), Document 17 is considered a Cabinet-in-Confidence document, exempt from release pursuant to section 28(1)(b) of that Act. The decision that this Document is exempt from disclosure under section 28(1)(b) of the VIC FOI Act has previously been upheld by the Office of the Victorian Information Commissioner, following a previous FOI request received by the State for access to the Document.

Whilst Document 17, in the circumstances of this FOI request, is not captured by section 34 of the FOI Act as it relates to the Victorian State Cabinet, it is still nonetheless considered a Cabinet-in-Confidence document and is exempt from disclosure pursuant to section 28(1)(b) of the VIC FOI Act. Therefore, by releasing a Victorian State Cabinet-in-Confidence document that was communicated confidentially to the Department, I am of the view that it would be seen to be circumventing and undermining the clear processes and exemptions set out in the State of Victoria's FOI legislation and regulations, and doing so would clearly be contrary to the public interest and the proper administration of the law, both at the Commonwealth and State level.

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.

## **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 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
- undermine the established process for confidential communications between the State and Commonwealth Governments concerning the discussions and negotiations of funding arrangements for major infrastructure projects, which are regularly supported by both State and Commonwealth Government funding
- undermine the widely accepted principle that Cabinet-in-Confidence material is a form of confidential document that is not appropriate for release pursuant to an FOI request.

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 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 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

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

Yours sincerely

s22(1)(a)(ii)

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

Date: 4/4/23



## SCHEDULE OF DOCUMENTS FOI 23-118

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	15/03/2021	Email Subject: Monthly Road Coordination Meeting	Access granted in full to relevant information	s22
1.1	22/02/2021	<b>Attachment to Document 1</b> Monthly Roads Coordination Meeting 22-02-2021 Minutes.pdf	Access granted in full to relevant information	s22
2.	25/03/2021	Email Subject: RE: Shepparton Business case	Access granted in part	s22 s47B(b)
3.	30/03/2021	Email Subject: Accepted: Shepparton Bypass discussion	Access granted in full to relevant information	s22
4.	01/04/2021	Email Subject: Remaining Milestones for 20/21 FY	Access granted in full to relevant information	s22
5.	26/04/2021	Email Subject: RE: Monthly Roads Meeting – Agenda	Access granted in full to relevant information	s22
5.1	27/04/2021	<b>Attachment to Document 5</b> Monthly Roads Coordination Meeting 27-04-2021.pdf	Access granted in full to relevant information	s22
6.	04/05/2021	Email Subject: RE: Monthly Roads Meeting – Agenda	Access granted in full to relevant information	s22
6.1	27/04/2021	<b>Attachment to Document 6</b> Monthly Roads Coordination Meeting 27-04-2021	Access granted in full to relevant information	s22
7.	17/05/2021	Email Subject: Monthly Roads Coordination Meeting	Access granted in full to relevant information	s22
7.1	27/04/2021	<b>Attachment to Document 7</b> Monthly Roads Coordination Meeting 27-04-2021 Minutes.pdf	Access granted in full to relevant information	s22

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
8.	27/05/2021	Email Subject: RE: Monthly Roads Coordination Meeting	Access granted in full to relevant information	s22
8.1	27/05/2021	<b>Attachment to Document 8</b> Monthly Roads Coordination Meeting 27-05-2021.pdf	Access granted in full to relevant information	s22
9.	21/06/2021	Email Subject: Monthly Roads Coordination Meeting – Agenda	Access granted in full to relevant information	s22
9.1	27/05/2021	<b>Attachment to Document 9</b> Monthly Roads Coordination Meeting 27-05-2021 Minutes.pdf	Access granted in full to relevant information	s22
10.	28/06/2021	Email Subject: RE: Monthly Roads Coordination Meeting – Agenda	Access granted in full to relevant information	s22
10.1	28/06/2021	<b>Attachment to Document 10</b> Monthly Roads Coordination Meeting 28-06-2021.pdf	Access granted in full to relevant information	s22
11.	28/07/2021	Email Subject: RE: Monthly Roads Coordination Meeting	Access granted in full to relevant information	s22
11.1	26/07/2021	<b>Attachment to Document 11</b> Monthly Roads Coordination Meeting 26-07-2021 Minutes.pdf	Access granted in full to relevant information	s22
12.	16/08/2021	Email Subject: Monthly Roads Meeting – Agenda	Access granted in full to relevant information	s22
12.1	26/07/2021	<b>Attachment to Document 12</b> Monthly Roads Coordination Meeting 26-07-2021 Minutes.pdf	Access granted in full to relevant information	s22
13.	19/11/2021	Email Subject: RE: Vic Roads Program Senior Executives meeting - attached papers	Access granted in full to relevant information	s22
13.1	19/11/2021	<b>Attachment to Document 13</b> 211119 Vic Roads Program Senior Execs Update - Agenda.docx	Access granted in full to relevant information	s22

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
13.2	19/11/2021	<b>Attachment to Document 13</b> 20211119 MRPVCommonwealth Presentation-WL071466494753.pdf	Access granted in full to relevant information	s22
14.	15/02/2022	Email Subject: Business cases + Shepparton Bypass meeting times	Access granted in full to relevant information	s22
15.	21/02/2022	Email Subject: FW: MRPV Briefing	Access granted in full to relevant information	s22
16.	26/10/2022	Email Subject: Vic Election Commitments - related to Commonwealth program	Access granted in full to relevant information	s22
16.1	13/10/2022	<b>Attachment to Document 16</b> 20221012 Releasing business case for Shepparton Bypass - Kyabram Free Press.pdf	Access granted in full	
17.	-	Shepparton Bypass Business Case	Access refused	s47B(b)

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-121

s22(1)(a)

(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 11 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
- submissions from third parties consulted about documents which contain information concerning them

### 3 Scope of your request

You requested access to:

*the grants and contracts related to the following grants awarded:*

*GA148640 (published 29 Jan. 2021)*

*GA148640-V1 (published 21 Sept. 2021)*

*GA148640-V2 (published 4 Aug. 2022)*

*These grants related to the GO ID 4286*

### 4 Decision

I have identified 79 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 two documents
- grant partial access to five documents
- refuse access to 70 documents in full

I note that two documents included as attachments to other documents in scope are not relevant to your request and fall outside the scope of your request.

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 relevant documents or parts of documents are set out below.

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

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in

the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine “arm’s-length” buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

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

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

As notified to you on 23 February 2023, in accordance with the obligations under section 27 of the FOI Act, the Department consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I decided that the documents marked ‘s47’ in the schedule or parts of the documents marked ‘s47’ are exempt from disclosure under section 47(1)(b) 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 documents marked 's47C' in the schedule or 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 documents marked 's47C' in the schedule or 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 of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on the Department's 'proper and efficient' operations, that is, the Department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

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

#### **5.4 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' include personal information about a number of individuals.

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

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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

- the information is not well known outside of the context of this matter
- the person to whom the information relates is not known to be or to have been associated with the matters dealt with in the documents
- the information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable from the information in the documents
- 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.

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.

## 5.5 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 would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

### Business information

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

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

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

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

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

### Unreasonable adverse effect of disclosure

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

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

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

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

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 or 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.

## 5.6 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 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
  - 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 process similar grant applications in the future
- 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.

## 5.7 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.

In addition, 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 Affected third party review rights

You were informed on 23 February 2023 that consultation with third parties would be necessary. A submission has been made that certain parts of documents should be exempt from disclosure under the FOI Act. My decision, however, is to grant access to that information. As such, the relevant third party has review rights under the FOI Act.

As a result, I am unable to provide you with access to the information that is subject to third party review rights until the third-party has exhausted those review rights.

## 7 Legislative provisions

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

## 8 Your review rights

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

## 9 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



s22(1)(a)(ii)

A/g Assistant Secretary  
Arts Development & Investment Branch  
Office for the Arts

Date: 6 April 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 23-121

Doc No.	Date of document	Description of document	No of pages	Decision on access	Provision of FOI Act
1.	30 Sep 20	Application Form	37	Release in part	47, 47F, 47G
2.	29 Sep 20	Application Attachment	2	Exempt in full	47
3.	30 Sep 20	Application Attachment	3	Exempt in full	47
4.	25 Sep 20	Application Attachment	5	Exempt in full	47
5.	30 Sep 20	Application Attachment	6	Exempt in full	47
6.	31 Aug 20	Application Attachment	3	Release in part	p1, 47G p3, 47
7.	30 Sep 20	Application Attachment	2	Exempt in full	47
8.	8 Oct 20	Eligibility Check Form 54 58-	4	Exempt in full	47, 47E(d), 47G
9.	14 Oct 20	Phase 1 Assessment Form	9	Exempt in full	47, 47C, 47E(d)
10.	16 Oct 20	Phase 1 Assessment Form	9	Exempt in full	47, 47C, 47E(d)
11.	4 Nov 20	Phase 2 Assessment Form	3	Exempt in full	47C, 47E(d)
12.	9 Nov 20	MS20-000816 – Ministerial Submission	4	Release in part	22, 47C, 47E(d), 47G
13.	9 Nov 20	Brief Attachment A	16	Release in part	22, 47
14.	9 Nov 20	Brief Attachment B	N/A	Out of scope	22
15.	9 Nov 20	Brief Attachment C	24	Release in full	
16.	9 Nov 20	Brief Attachment D	1	Release in full	
17.	9 Nov 20	Brief Attachment E.1	2	Exempt in full	47E(d)
18.	9 Nov 20	Brief Attachment E.2	2	Exempt in full	47E(d)
19.	29 Oct 20	Email: Australia Council Consultations	4	Exempt in full	22, 47C
20.	29 Oct 20	Attachment: Australia Council Consultations 132-280	149	Exempt in full	47, 47C, 47E(d), 47G
21.	11 Jan 21	Funding Agreement	22	Release in part	47, 47G, 47F
22.	31 Aug 21	Deed of Variation 1	6	Exempt in full	22, 47F, 47
23.	3 Aug 22	Deed of Variation 2	11	Exempt in full	22, 47F, 47
24.	7 Oct 21	Email correspondence	3	Exempt in full	22, 47, 47C, 47E(d), 47F
25.	13 Oct 21	Departmental email correspondence	2	Exempt in full	22, 47, 47E(d), 47F
26.	14 Sep 22	File Note	1	Exempt in full	47E(d)
27.	24 Nov 20	Letter to applicant	1	Exempt in full	47F, 47G
28.	15 Dec 20 12:02PM	Email correspondence		Exempt in full	22, 47F, 47G
29.	15 Dec 20 2:42PM	Email correspondence	6	Exempt in full	22, 47C, 47E(d), 47F, 47G
30.	15 Dec 20 4:28PM	Email correspondence	6	Exempt in full	22, 47C, 47E(d), 47F, 47G
31.	16 Dec 20 3:36PM	Email correspondence	1	Out of scope	
32.	17 Dec 20 1:53PM	Email correspondence	1	Exempt in full	22, 47F, 47C, 47E(d)
33.	18 Dec 20 7:43 AM	Email correspondence	1	Exempt in full	22, 47C, 47
34.	11 Jan 21 1047 AM	Email correspondence with attachment	22	Exempt in full Exempt in full	22, 47F, 47E(d) 22 47F, 47, 47G
35.	11 Jan 21 1126 AM	Email correspondence	1	Exempt in full	22 47F, 47G
36.	28 Jan 2021 1:27PM	Email correspondence		Exempt in full	22, 47F, 47G
37.	3 Feb 21 12:23PM	Email correspondence	2	Exempt in full	22, 47C
38.	3 Feb 21 12:37PM	Email correspondence	2	Exempt in full	22, 47C
39.	3 Feb 21 4:11PM	Email correspondence	4	Exempt in full	22, 47C



Doc No.	Date of document	Description of document	No of pages	Decision on access	Provision of FOI Act
40.	10 Feb 21 5:13PM	Email correspondence	4	Exempt in full	22, 47C, 47F, 47G
41.	11 Feb 21 11:45AM	Email correspondence	4	Exempt in full	22, 47C
42.	12 Feb 21 10:35AM	Email correspondence	2	Exempt in full	22, 47C
43.	12 Feb 21 4:45PM	Email correspondence	2	Exempt in full	22, 47F, 47C
44.	16 Feb 21 3:48PM	Email correspondence	2	Exempt in full	22, 47F, 47C
45.	17 Feb 21 4:22PM	Email correspondence	1	Exempt in full	22, 47F, 47C
46.	17 Feb 21 7:20PM	Email correspondence	3	Exempt in full	22, 47C
47.	17 Feb 21 7:26PM	Email correspondence	2	Exempt in full	22, 47F
48.	19 Mar 21 11:00AM	Email correspondence	3	Exempt in full	22, 47F, 47C
49.	29 Jul 21 2:26 PM	Email correspondence	5	Exempt in full	22, 47C, 47G, 47F
50.	5 Aug 21 10:40AM	Email correspondence	8	Exempt in full	22, 47F, 47C,
51.	13 Aug 21 10:33 am	Email correspondence	1	Exempt in full	22, 47F,
52.	16 Aug 21 9:17 AM	Email correspondence with attachment	11	Exempt in full	22, 47, 47F
53.	16 Aug 21 10:23 AM	Email correspondence with attachment	11	Exempt in full	22, 47, 47F
54.	18 Aug 21 4:48PM	Email correspondence	4	Exempt in full	22, 47C
55.	6 Oct 21 9:18PM	Email correspondence	3	Exempt in full	22, 47C, 47F,47
56.	7 Oct 21 3:46PM	Email correspondence	5	Exempt in full	22, 47F, 47C, 47
57.	14 Oct 21 4:09PM	Email correspondence with attachment	11	Exempt in full	47F, 47
58.	19 Oct 21 3:33pm	Email correspondence	1	Exempt in full	22, 47C
59.	21 Oct 21 10:13AM	Email correspondence	3	Exempt in full	22, 47C,
60.	22 Oct 21 9:40AM	Email correspondence	1	Exempt in full	22, 47C
61.	22 Oct 21 12:45pm	Email correspondence	4	Exempt in full	22, 47C
62.	29 Jul 22 8:57Pm	Email correspondence	8	Exempt in full	47F, 22, 47C
63.	29 Jul 22 2:05PM	Email correspondence	1	Exempt in full	22, 47F, 47C
64.	1 Aug 22 1:58PM	Email correspondence		Exempt in full	22, 47F, 47C
65.	1 Aug 22 2:02PM	Email correspondence		Exempt in full	22, 47F, 47C
66.	4 Aug 22 12:13PM	Email correspondence	2	Exempt in full	22, 47C
67.	6 Sep 22 10:20AM	Email correspondence	2	Exempt in full	22, 47F, 47c
68.	6 Sep 22 12:16PM	Email correspondence	7	Exempt in full	22, 47C, 47F, 47G
69.	7 Sep 22 1:33PM	Email correspondence	2	Exempt in full	22, 47C47F, 47G
70.	7 Sep 22 1:33PM	Email correspondence	2	Exempt in full	47F, 22, 47C
71.	8 Sep 22 11:15AM	Email correspondence	4	Exempt in full	47F, 22, 47C
72.	12 Sep 22 9:08PM	Email correspondence	6	Exempt in full	22, 47C, 47F, 47G
73.	14 Sep 22 7:50AM	email correspondence	7	Exempt in full	22, 47C, 47F, 47G
74.	26 Sep 22 3:44PM	Email correspondence with attachment	6	Exempt in full	22, 47F, 47G
75.	29 Sep 22 12:32	Email correspondence	5	Exempt in full	22, 47C, 47F
76.	11 Oct 22 9:27AM	Email correspondence	3	Exempt in full	22, 47E(d), 47F, 47G
77.	24 Oct 22 9:30AM	Email correspondence	7	Exempt in full	22, 47C 47F
78.	25 Oct 22 9:11AM	Email correspondence	6	Exempt in full	47F, 22, 47C, 47G
79.	26 Oct 22 9:59AM	Email correspondence with attachment	6	Exempt in full	22, 47F, 47G

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-155

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 7 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 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:

*all documents, including but not limited to emails, text messages, and any other forms of correspondence between the Department of Infrastructure and Transport and Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the South Australian Department of Infrastructure*

and Transport regarding Hahndorf Township Improvement and Access Upgrade Project. Period 21/03/22 and 7 February 2023

### 3.1 Clarification/Modification of scope of request

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

*1 November 2022 to 7 February 2023*

## 4 Decision

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

I have decided to:

- grant access in full to one document
- grant access in full to relevant information in two 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 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 document marked 's47C' contain material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that the parts of the document marked 's47C' 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 not inform debate on a matter of public importance
- would not promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

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

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

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

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

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally 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 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

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

Date: 5/4/23

## 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	Email – SA DIT to DITRDCA – Senate Order for the Production of Documents – Hahndorf Township Improvements and Access Upgrade	Access granted in part	s22 s47C
2	23 Nov 22	Email – DITRDCA to SA DIT – Media Article – Mount Barker Courier	Access granted in full to relevant information	s22
2.1	23 Nov 22	Media Article – Mount Barker Courier – Interchange work to ease congestion	Access granted in full	
3	23 Nov 22	Email – SA DIT to DITRDCA – Media Article – Mount Barker Courier	Access granted in full to relevant information	s22



## ATTACHMENT B.

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-170

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 17 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 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

On 17 February 2023, you requested access to:

*APP 12* gives me right to seek access to personal information that the department holds with the following subsection 6(1) of the Privacy Act definition of the personal information: as the 'information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information is true or not, and
- whether the information or opinion is recorded in a material form or not'.

*The department is said to hold personal information if it has possession or control of a record that contains the personal information (section 6(1) of the Privacy Act). This means I can seek access to the personal information physically held by the department.*

*I seek personal information held by Department of Infrastructure, Transport, Regional Development and Communications - collected in connection with my engagement as the employee by the department for purposes connected with preventing, detecting, investigating and dealing with fraud, misconduct or other integrity matters relevant to the department including performing the management, employment and personnel functions.*

### 3.1 Clarification/Modification of scope of request

On 19 February, you provided the following clarification in relation to the scope of your request:

*all documents in relation to my employment held by Department of Infrastructure, Transport, Regional Development, Communications and the Arts*

*Within the a 'document' defined in s 4(1) to include any or any part of the following:*

- *any paper or other material on which there is writing*
- *drawing or photograph*
- *any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them*
- *any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device*
- *any article on which information has been stored or recorded, either mechanically or electronically*
- *any other record of information*
- *any copy, including any part of any copy, of a reproduction or duplicate of a thing listed above*

*With the date range starting from November 2022, including the personal information records obtained by the department in relation to my employment not limited to the November 2022/ February 2023 date range.*

Further on 27 February 2023, following consultation with you, you agreed to the following:

*documents already available to me may be excluded from the scope of my request.*

## 4 Decision

I have identified 18 documents (including attachments) that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to:

- grant access in full to 7 documents
- grant partial access to 11 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 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 6.114 of the FOI Guidelines states that for the conditional exemption of 47E(c) 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.

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.

I am satisfied that, because of the nature of the work performed by the public servants whose names and contact details are included in the documents, disclosure of that information may pose a risk to the health and safety of those staff.

The Department provides support and information to the Australian community and has many external facing contact points including phone and email addresses for the community to contact the Department in a safe and efficient way. These general contact details are readily available, including being published on the Department's website.

These specific channels of communication have been put in place to enable the Department to effectively manage its resources and protect the wellbeing of its staff. They are resourced to manage enquiries from members of the public, with staff appropriately trained to manage these types of enquiries. It is reasonable to expect that if these channels of communication were by-passed, the Department would experience a diversion of its resources, and in addition the management functions of the agency and its personnel would be detrimentally impacted.

I am satisfied that the parts of the documents marked 's47E(c)' relate to human resources and performance management policies, counselling activities, recruitment activities, matters concerning allegations of harassment as well as workplace health and safety functions.

Paragraph 6.117 of the FOI Guidelines note that the AAT has accepted that candour is essential when an agency seeks to investigate staff complaints, especially those of bullying. In such cases staff may be reluctant to provide information and cooperate with investigators if they were aware that the subject matter of those discussions would be disclosed through the FOI process.

The parts of the documents marked 's47E(c)' relate to an investigation into staff complaints. I am satisfied that disclosure of this information would, or could reasonably be expected to, result in a loss of trust in the Department's management of these types of investigations and an unwillingness by its staff to provide information to and cooperate with such investigations in the future. This would create an environment where such investigations are not able to be carried out with the candour necessary to ensure a fair investigation for all concerned, and this would result in a substantial adverse effect on the Department's ability to manage its staff.

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

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.

## 5.2 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 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 fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct
- could reasonably be expected to prejudice the management function of an agency

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 fact that the relevant staff were not discharging powers, making decisions or exercising functions that impact on the rights and entitlements of members of the community
- the fact that the relevant staff details are included in the documents merely as a result of administrative support functions, such as secretariat support
- 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.

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
- (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 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

### Further information

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

Yours sincerely,

s22(1)(a)(ii)

Stephanie Bourke  
 Assistant Secretary  
 Human Resources & Property Branch  
 Chief Operating Officer Group  
 13/04/2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-170

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	1	24/11/2022	Commencement Checklist	Access granted in part	s47E(c)
2.	1	14/02/2023	Notice of Termination	Access granted in full	
3.	5	20/12/2022	Email Subject: RE: Aggie McAdam - contract period and end date clarification	Access granted in part	s47E(c)
4.	2	23/12/2022	Email Subject: RE: Offer of Non Ongoing Contract Extension	Access granted in full	
4.1	5	23/12/2022	<b>Attachment to Document 4</b> 42020 - Non-Ongoing Extension - MCADAM Agnieszka (Aggie).pdf	Access granted in full	
5.	1	23/12/2022	Email Subject: Non Ongoing Contract extension for MCADAM, Agnieszka (Aggie) - 88146046 – 117990	Access granted in part	s47E(c)
6.	4	21/02/2023	Email Subject: RE: Offer of Non Ongoing Contract Extension	Access granted in part	s47E(c)
7.	2	19/01/2023	Email Subject: RE: Complaint	Access granted in part	s47E(c)
8.	3	20/01/2023	Email Subject: RE: Complaint	Access granted in full	
9.	5	20/01/2023	Email Subject: FW: Work from home application factor	Access granted in part	s47E(c)
10.	2	19/01/2023	Email Subject: RE: complain about breach of my privacy	Access granted in full	
11.	2	19/01/2023	Email Subject: Privacy Incident Response	Access granted in part	s47E(c)



Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
12.	3	20/01/2023	Email Subject: RE: complain about breach of my privacy	Access granted in full	
13.	4	30/01/2023	Email Subject: RE: complain about breach of my privacy	Access granted in part	s47E(c)
14.	3	18/02/2023	Email Subject: Fwd: complain about breach of my privacy	Access granted in part	s47E(c)
15.	7	22/02/2023	Email Subject: RE: complain about breach of my privacy	Access granted in full	
16.	6	20/02/2023	Email Subject: RE Timesheet inquiry	Access granted in part	s47E(c)
17.	6	21/02/2023	Email Subject: RE Timesheet inquiry	Access granted in part	s47E(c)

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-204

s22(1)(a)(ii)

Dear s22(1)(a)  
(ii)

### Decision on your Freedom of Information Request

I refer to your request of 15 March 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

On 15 March 2023, you requested access to:

*the following records related to use of model reports authored by Sydney AVV Pty Ltd where a purported agreement to use between the applicant of a Concessional RAV Entry (CRE) and Sydney AVV Pty Ltd exists, and the Registered Automotive Workshop (RAW) and Authorised Vehicle Verifier (AVV) are purported to have sighted a declaration of agreement to use model reports, and vehicles have been approved in the Rover portal and entered on to register of approved vehicles (RAV).*

GPO Box 594, Canberra ACT 2601, Australia

• websites [infrastructure.gov.au](http://infrastructure.gov.au) | [arts.gov.au](http://arts.gov.au)

1. *Vehicle identification numbers (VIN) for each and all vehicles entered onto the RAV where the declared Model Report is authored by Sydney AVV Pty Ltd*
2. *The Model Report approval number used for each VIN*
3. *The CRE applicant name for each for each VIN*
4. *The CRE approval number for each VIN*
5. *The RAW name and approval number who processed each VIN*
6. *The AVV name and approval number who processed each VIN*

### 3.1 Modification of scope of request

On 13 April 2023, following consultation with you, you agreed to modify the scope of your request to the following:

*A table showing the Vehicle Identification Numbers (VIN) of the 783 confirmed records authored by Sydney AVV Pty Ltd.*

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

I have decided to grant partial access to the one document.

A schedule setting out the document relevant to your request 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 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 Vehicle Identification Numbers that if released, could be used to reveal personal information about a number of individuals or companies by means of the Departments publicly accessible Register of Approved Vehicles (RAV) search.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates

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

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

- the individuals personal information is able to be identified by means of the information contained within the document
- 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.

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.

## 5.2 Public interest considerations

## 6 Legislative provisions

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

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

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

 *M*  
Mitchell Cole  
Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 21/04/2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-204

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	5	Current as at 15/03/2023	Vehicle Identification Numbers (VIN) of confirmed records authored by Sydney AVV Pty Ltd	Access granted in part	s47F



**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-182

s22(1)(a)(ii)

Dear s22(1)(a)

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

I refer to your request of 25 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### **1 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:

*“Documentation for a grant awarded under the RISE fund regarding the application and the contract that was agreed to by the recipient, details are as follows:*

<i>PBS Program Name:</i>	<i>ITCRDCA 20/21 2.1: Arts and Cultural Development</i>
<i>Grant Program:</i>	<i>Restart Investment to Sustain and Expand (RISE) Fund</i>
<i>GO Title:</i>	<i>Restart Investment to Sustain and Expand (RISE) Fund</i>
<i>Internal Reference ID:</i>	<i>RISE2317</i>
<i>Grant Activity:</i>	<i>Origin Fields 2021/2022</i>
<i>GA ID:</i>	<i>GA187430</i>
<i>Recipient Name:</i>	<i>Origin Fields Pty Ltd</i>
<i>Recipient</i>	<i>ABN: 25 631 212 185”</i>

### 4 Decision

I have identified 11 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
- refuse access to nine documents in full.

A schedule setting out the documents relevant to your request, with my decision in relation to 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 relevant documents or 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' include personal information about a number of individuals.

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

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates

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

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

- the information is not well known outside of the context of this matter
- the information is not available from publicly accessible sources
- 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 whose personal information is contained in the documents are identifiable from the information in the documents
- release of this information would cause anxiety to the individuals concerned
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

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

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

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

## 5.2 Section 47G – Business information

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

### Business information

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

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

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

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

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

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

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

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

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

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

For the reasons outlined above, I decided that the documents marked ‘s47G’ in the schedule or 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.

### **5.3 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 not inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

### Factors weighing against disclosure

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

- could reasonably be expected to prejudice the protection of 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 the Department's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future

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

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

- (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.

### **5.4 Section 22 – deletion of irrelevant and 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.

In addition, 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](http://www.legislation.gov.au/Series/C2004A02562).

## **7 Your review rights**

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

## **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).



## Further information

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

Yours sincerely

s22(1)(a)(ii)

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

Date: 26 April 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.	26	20/06/2021	Restart Investment to Sustain and Expand (RISE) Fund Application Form – Origin Fields	Access granted in part	s47F s47G
2.	-	-	Application Attachment	Access refused	s47G
3.	-	-	Application Attachment	Access refused	s47G
4.	-	-	Application Attachment	Access refused	s47G
5.	-	-	Application Attachment	Access refused	s47G
6.	-	-	Application Attachment	Access refused	s47G
7.	-	-	Application Attachment	Access refused	s47G
8.	-	-	Application Attachment	Access refused	s47G
9.	-	-	Application Attachment	Access refused	s47G
10.	-	-	Application Attachment	Access refused	s47G
11.	16	23/08/2021	Commonwealth Grant Agreement	Access granted in part	s47F s47G s22

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-176

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 24 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 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

On 24 February 2023, you requested access to:

*All correspondence sent by the Minister or his Department to Mr Ryan Stokes AO, Chairman of the National Library of Australia.*

#### 3.1 Modification of scope of request

On 1 March 2023, you agreed to modify the scope of your request to the following:

*All correspondence sent by the Minister and his Department to Mr Ryan Stokes AO, Chairman of the National Gallery of Australia, from 1 June 2022 to date, 1 March 2023, and all correspondence sent by Mr Stokes to the Minister and his Department from 1 June 2022 to date, 1 March 2023.*

#### 4 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 nine documents
- grant partial access to six documents
- refuse access to seven 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 relevant documents or 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.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that the parts of the documents marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that:

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence

- the communication was brought into existence for the dominant purpose of giving or receiving legal advice.
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that the parts of the documents marked 's42' are exempt from disclosure under section 42 of the FOI Act.

## 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 find 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 document marked 's45' 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 parts of the document 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 states:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and

- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have ‘exchange value’, in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine “arm’s-length” buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

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

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

As notified to you on 21 March 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

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

#### 5.4 Section 47C – Deliberative processes

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

## Deliberative process

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

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

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

## Deliberative matter

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

I am satisfied that the documents marked 's47C' in the schedule or 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 an agency 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 or is embedded in or intertwined with the deliberative content such that it is impractical to excise.

For the reasons outlined above, I decided that the documents marked 's47C' in the schedule or 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.



## 5.5 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 an agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the documents marked 's47E(d)' in the schedule or 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 an agency's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the agency conducts those operational activities.

For the reasons outlined above, I decided that the documents marked 's47E' in the schedule or 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.

## 5.6 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 include personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines states:

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.

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.

## 5.7 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- 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.

### **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.

## 5.8 Public interest considerations

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

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

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

### Factors favouring disclosure

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

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

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

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

### Factors weighing against disclosure

I consider that 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 diminish donors' confidence in the ability of an agency that operates as a Commonwealth Corporate Entity to achieve its objectives, which in turn would prejudice that entities ability to:
  - raise funds from philanthropy or obtain best value for money through competitive tendering processes
  - obtain best value for money through competitive tendering processes if the detailed methodology or decisions regarding procurement processes is released; and

- protect the art in the national collection and the entities visitors as it may lead to increased security threats and the potential exploitation of identified or potential vulnerabilities in the environmental and security systems
- could reasonably be expected to prejudice the competitive commercial activities of an agency
- could reasonably be expected to prejudice the operational activities and management functions 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 an individual's right to personal privacy.

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.

### **5.9 Section 22 – deletion of 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.

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

## **6 Legislative provisions**

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

## **7 Your review rights**

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

## **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

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

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

Date: 3/5/23

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-176

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	3 August 2022	Ministerial Correspondence to Mr Ryan Stokes	Access granted in full	
2.	9 September 2022	Ministerial Correspondence to Mr Ryan Stokes	Access granted in full	
3.	10 October 2022	Ministerial Correspondence to Mr Ryan Stokes	Access granted in full	
4.	10 October 2022	Ministerial Correspondence to Mr Ryan Stokes	Access refused	s47C s47F s47E(d)
5.	28 October 2022	Correspondence from Ministers delegate to Mr Ryan Stokes	Access granted in part	s47 s47C s47E(d) s47G
6.	1 December 2022	Ministerial Correspondence to Mr Ryan Stokes	Access granted in full	
7.	22 December 2022	Ministerial Correspondence to Mr Ryan Stokes	Access granted in full	
8.	24 February 2023	Correspondence from Ministers delegate to Mr Ryan Stokes	Access granted in part	s42 s47 s47C s47E(d)
9.	3 June 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in full	
10.	1 July 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access refused	s47C s47F s47E(d)
11.	9 August 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access refused	s47C s47F s47E(d)
12.	15 August 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in part	s47E(d)
13.	26 August 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in full	



Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
14.	9 September 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in part	s45 s47Cs 47E(d)
15.	17 October 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in part	s47 s47E(d) s47G
16.	25 October 2022	Correspondence from Mr Ryan Stokes to the Department	Access refused	s47E(d)
17.	26 October 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in full	
18.	8 November 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access refused	s47C s47F
19.	2 December 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access refused	s47C s47F
20.	7 December 2022	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access refused	s47C s47F
21.	7 February 2023	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in full	
22.	10 February 2023	Correspondence from Mr Ryan Stokes to the Minister for the Arts	Access granted in part	s42 s47 s47C s47E(d)

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

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-194

s22(1)(a)  
(ii)

Dear s22(1)

## Decision on your Freedom of Information Request

I refer to your request of 28 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

### 1 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:

*“...pertaining to the RISE grant awarded to MONA (Tasmania) for the build and development of their music recording studio:*

- 1. The application, including any breakdown of funds requested*
- 2. the terms of the grant”*

## 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 one document
- grant partial access two documents
- refuse access to seven 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**.

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 documents or 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' include personal information about a number of individuals.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document

- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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

- the information is not well known outside of the context of this matter
- the information is not available from publicly accessible sources
- 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 whose personal information is contained in the documents are identifiable from the information in the documents
- release of this information would cause anxiety to the individuals concerned
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

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

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

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

## 5.2 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

### Business information

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

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

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

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

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

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

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

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

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

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

For the reasons outlined above, I decided that the documents marked ‘s47G’ in the schedule or 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.

### **5.3 Public interest considerations**

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

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

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

- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

### Factors favouring disclosure

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

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

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

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

### Factors weighing against disclosure

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

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - 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:

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



## Conclusion – disclosure is not in the public interest

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

### 5.4 Section 22 – deletion of irrelevant and exempt material

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

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

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

In addition, as I decided 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](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

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

Yours sincerely

s22(1)(a)(ii)



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

Date: 5 May 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 23-194

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	40	30/09/2020	Restart Investment to Sustain and Expand (RISE) Fund Application Form – MONA FOMA	Access granted in part	s47F s47G
2.	-	-	Application Attachment	Access refused	s47G
3.	-	-	Application Attachment	Access refused	s47G
4.	-	-	Application Attachment	Access refused	s47G
5.	-	-	Application Attachment	Access refused	s47G
6.	-	-	Application Attachment	Access refused	s47G
7.	-	-	Application Attachment	Access refused	s47G
8.	-	-	Application Attachment	Access refused	s47G
9.	1	29/09/2020	Application Attachment – Letter of Support	Access granted in full	
10.	20	12/01/2021	Commonwealth Grant Agreement	Access granted in part	s47F s47G s22

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

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-198

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

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

I refer to your request of 6 March 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
- submissions from third parties consulted about documents which contain information concerning them.

### **3 Scope of your request**

You requested access to:

*Documents describing the rationale for the National Intermodal Corporation using taxpayer monies to exercise the land options it currently holds in Beveridge, Victoria. This might be a business case, summary memoranda, or some other type of document.*

## 4 Decision

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

I have decided to:

- grant access in full to one document
- refuse access to 12 documents.

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

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 documents are set out below.

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

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

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

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

I am satisfied that the documents 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 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 to the affected third party.

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

## 5.2 Section 47 - Documents disclosing commercially valuable information

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

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

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

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

As notified to you on 16 March 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I decided that the parts of the document marked 's47' are exempt from disclosure under section 47(1)(b) of the FOI Act.

### 5.3 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.

#### 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.

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

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

##### **Personal Information**

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

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

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

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

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

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

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

I am satisfied that the disclosure of personal information contained within the 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

- 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 document marked 's47F' in the schedule 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.

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

## Factors weighing against disclosure

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

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy.

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

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

## Conclusion – disclosure is not in the public interest

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

## 6 Legislative provisions

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

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

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

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

s22(1)(a)(ii)

A/g Assistant Secretary  
Project Inception and Delivery Branch  
Significant Project Investment Delivery Office

Date: 02/05/2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-198

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	19/10/2021	Appendix E - Interstate Terminal Business Case Update	Access refused	s45
2.	03/22	National Intermodal Corporation Limited Statement of Expectations	Access granted in full	
3.	03/03/2022	Covering Letter to Shareholder Ministers	Access refused	s47 s47C s47F
4.	17/11/2022	Moorebank Intermodal Company Business Case: Option over Beveridge Land	Access refused	s45
4.1	-	Attachment to Document 4	Access refused	s45
4.2	-	Attachment to Document 4	Access refused	s45
4.3	-	Attachment to Document 4	Access refused	s45
4.4	-	Attachment to Document 4	Access refused	s45
5.	17/11/2022	Covering Letter to Shareholder Ministers	Access refused	s47C
6.	17/11/2022	Business Case: Beveridge Land Acquisition	Access refused	s45
6.1	-	Attachment to Document 6	Access refused	s45
6.2	-	Attachment to Document 6	Access refused	s45
6.3	-	Attachment to Document 6	Access refused	s45

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-201

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 10 March 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
- submissions from third parties consulted about documents which contain information concerning them.

#### 3 Scope of your request

You requested access to:

*I would like to view the acquittal reports for Reimagine Nambour (Incorporated Association) for use of a \$500,000 federal grant issued through the Building Better Regions Fund.*

*I would also like to view the acquittal reports for Nambour Alliance (Incorporated Association) for use of a \$50,000 and federal grant issued through the Building Better Regions Fund*

GPO Box 594, Canberra ACT 2601, Australia

• websites [infrastructure.gov.au](http://infrastructure.gov.au) | [arts.gov.au](http://arts.gov.au)



## 4 Decision

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.

Part 1 of your request seeks access to *the acquittal reports for Reimagine Nambour (Incorporated Association) for use of a \$500,000 federal grant issued through the Building Better Regions Fund*. The business area responsible for the subject matter of your request has conducted searches of the Department's information holdings, however 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 Part 1 of request and that the documents do not exist in the possession of the department.

Therefore, I have decided to refuse Part 1 of 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 meet the terms of this part of your request.

In relation to Part 2 of your request which seeks access to *the acquittal reports for Nambour Alliance (Incorporated Association) for use of a \$50,000 and federal grant issued through the Building Better Regions Fund*, I have identified one document and five associated attachments that are relevant to your request. These documents existed when your request was received.

I have decided to grant partial access to the one document, and to refuse access to its five attachments.

A schedule setting out the documents relevant to your request, with my decision in relation to 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 relevant documents or 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 the documents or parts of the documents marked 's47F' in the schedule includes personal information about a number of individuals.

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

- 6.142 Key factors for determining whether disclosure is unreasonable include:
- the author of the document is identifiable
  - the documents contain third party personal information
  - release of the documents would cause stress on the third party
  - no public purpose would be achieved through release
- 6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015] AICmr 26*, other factors considered to be relevant include:
- the nature, age and current relevance of the information
  - any detriment that disclosure may cause to the person to whom the information relates
  - any opposition to disclosure expressed or likely to be held by that person
  - the circumstances of an agency's collection and use of the information
  - the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
  - any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
  - whether disclosure of the information might advance the public interest in government transparency and integrity

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

- the 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.

For the reasons outlined above, I decided that the documents or parts of 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.

## 5.2 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the

business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

### **Business information**

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

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

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

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

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

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

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

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

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

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

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

### 5.3 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 not inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

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

- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
- could reasonably be expected to prejudice the Department's ability to obtain confidential information

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

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

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

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

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

### **5.4 Section 22 – deletion of exempt material**

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

As I decided 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 document 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](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

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

### **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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.

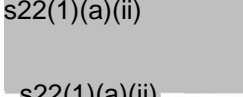
For your reference the Department's Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

**Further information**

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

Yours sincerely

s22(1)(a)(ii)



s22(1)(a)(ii)

*A/g*

Assistant Secretary  
Regional Programs Branch  
Regional Development and Local Government Division

Date: 8 May 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
1.	13/06/2019	End of Project Report	Access granted in part	s47F s47G
1.1	31/05/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.2	29/10/2018	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.3	30/01/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.4	01/03/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G
1.5	18/03/2019	<b>Attachment to Document 1</b> Tax Invoice – Nambour Chamber of Commerce Inc	Access refused	s47F s47G



## ATTACHMENT B.

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-211

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 22 of March 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. An analysis of the market structure and levels of competition in the Australian rail freight market prepared by the National Intermodal Corporation, or by external consultants on its behalf, and presented to the Department or its Ministers between 1 January 2022 and 22 March 2023
2. Briefing notes provided to Catherine King on the topic of her meeting with Paul Scurrah, CEO of Pacific National Pty Ltd, held on 14th March 2023
3. Documents which specifically request departmental or ministerial approval for the National Intermodal Corporation to exercise its options to acquire land at Beveridge, VIC.”

#### 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 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

#### 4 Decision

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

I have decided to:

- grant access in full to four documents
- grant partial access to one document
- refuse access to seven 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 relevant documents and parts of documents are set out below.

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

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

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

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

I am satisfied that the documents 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 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 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.

## 5.2 Section 47 - Documents disclosing commercially valuable information

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

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

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

- is only known to the Department and the affected third party for whom it has value
- is not known to others, and disclosure of the information would detract from its intrinsic commercial value

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

As notified to you on 14 of April 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 documents marked ‘s47’ in the schedule are exempt from disclosure under section 47(1)(b) of the FOI Act.

### 5.3 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 or parts of the documents marked ‘s47C’ contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

## Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

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

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

For the reasons outlined above, I decided that the documents marked 's47C' in the schedule or 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.

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

### Factors weighing against disclosure

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

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

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

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

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

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

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

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

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

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

**7 Your review rights**

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

**8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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.

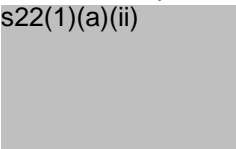
For your reference the Department's Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

**Further information**

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

Yours sincerely

s22(1)(a)(ii)



Jason Preece  
Assistant Secretary  
Project Inception and Delivery Branch  
Significant Projects Investment Delivery Office



## 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.	44	07/2022	Intermodal Rail Freight Competition	Access refused	s47 s45
2.	25	25/07/2022	Competitive dynamics of rail freight along the North South corridor	Access refused	s47 s45
3.	5	2/03/2023	Brief to Minister	Access refused	s47C
	1	2/03/2023	Attachment A	Access refused	s47
	4	2/03/2023	Attachment B	Access refused	s47
	3	2/03/2023	Attachment C	Access refused	s47
	2	2/03/2023	Attachment D	Access refused	s47
	11	4/12/ 2022	Attachment E	Access granted in full	
4.	3	7/03/2023	Meeting Brief for Minister King	Access granted in part	s47C
	1	7/03/2023	Attachment A	Access granted in full	
	1	7/03/2023	Attachment B	Access granted in full	
	4	7/03/2023	Attachment C	Access granted in full	

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

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-212

s22(1)(a)(ii)

Dear s22(1)(a)

## Decision on your Freedom of Information Request

I refer to your request of 22 March 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. *A list of all written submissions made to Kerry Schott's review of Inland Rail, including the names of the persons or organisations who made them. For clarity, I do not seek copies of the submissions themselves.*
2. *A written report regarding the intermodal rail haulage prepared by EY Port Jackson Partners for the National Intermodal Corporation between 1 July 2022 and 22 March 2023*

#### 1.1 Modification of scope of request

On 13 April 2023, following consultation with you, you agreed to withdraw Part 1 and thus modifying the scope of your request to the following:

*A written report regarding the intermodal rail haulage prepared by EY Port Jackson Partners for the National Intermodal Corporation between 1 July 2022 and 22 March 2023*

### 2 Authority to make decision

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

### 3 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.

#### 4 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 refuse access to this document in full.

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 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 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.

## 5.2 Section 47 - Documents disclosing commercially valuable information

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

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

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

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

- would reduce in value to the business operations or commercial activities of the affected third party if disclosed.

As notified to you on 14 April 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

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

### 5.3 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; or

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, <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.

Having regard to the above, I am satisfied that disclosure would interrupt and create difficulty in relation to ongoing Commonwealth-State negotiations, which would adversely affect the development of future projects between these administrations.

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

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

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

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

#### **5.4 Section 47E - Documents affecting certain operations of agencies**

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, 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 document marked 's47E(d)' in the schedule 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 document marked 's47E' in the schedule 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.

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



## Factors weighing against disclosure

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

- would adversely affect the administration of a continuing Commonwealth-State project
- would damage the continued level of trust or co-operation in existing inter-government working relationships
- would prejudice the attainment of favourable terms in Commonwealth-State negotiations
- 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 a group of individuals.

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

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

## Conclusion – disclosure is not in the public interest

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

## 6 Legislative provisions

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

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



Jason Preece  
Assistant Secretary  
Project Inception and Delivery Branch  
Significant Projects Investment Delivery Office

Date: 19/05/2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-212

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	14/11/2022	Melbourne Intermodal Volumes: preliminary volume forecasts	Access refused	s47 s47B(a) s47E(d)

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-213

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 22 March 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:

*“Access to documents that make reference to bioptics (bioptic glasses) or telescopic aids:*

*All documents including but not limited to briefs, papers, emails internal and external, evidence reports, advice to any Minister, advice to any member of executive, advice to any medical panel, advice to any organisation external to the department.*

*Organisations external could include but not limited to:*

- *National Transport Commission*
- *Austrroads.*

*Ministers and executive may include but not limited to:*

- *Infrastructure and Transport Ministers’ Meeting (ITMM)*
- *Infrastructure and Transport Senior Officials’ Committee, which includes the heads of Commonwealth, state and territory agencies.*

*Emails could include but not limited to, from and to these people:*

s22(1)(a)(ii) - Office of Road Safety

*Any documents containing data/statistics or individual incidents, of road accident and/or infringement notice given to a person driving using a bioptic or telescopic device. To exclude publicly available documents such as Assessing Fitness to Drive Guidelines. “*

## 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 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

## 4 Background

Through undertaking searches for documents relating to your request, as noted in the acknowledgement email the department sent to you on 27 April 2023, a number of documents were identified that fell outside the scope of your request as they were documents or correspondence sent directly to or from you.

The department also identified a number of documents that were publicly available, some of which are included in the below schedule of documents. This includes the Assessing Fitness to Drive Guidelines. As noted in your request, these documents are out of scope, however we have included links to some of these documents for your reference.

Finally, the department also identified a number of documents relating to your employment that referenced the word bioptics and telescopic lenses, however these documents relate to your employment, including your Workplace Health and Safety Assessments, and we have made the decision that these documents fall outside the scope of this request.

## 5 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**.

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

## 6 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.

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

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

#### Personal Information

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

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

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

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

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

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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

- the individuals whose personal information is contained in the document 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.



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.

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

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

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. The documents contain personal identifiers of public servants. When your request was acknowledged, we notified you that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers would be considered irrelevant to the scope of your request unless you told us that you were expressly seeking access to that information. On the basis that you did not notify us otherwise, I decided this information is irrelevant to your request and an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

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

## **7 Legislative provisions**

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

## **8 Your review rights**

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

## **9 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

**Further information**

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

Yours sincerely

s22(1)(a)(ii)



Adam Stankevicius  
Assistant Secretary  
Office of Road Safety  
Road and Vehicle Safety Division

22 May 2023

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

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS 23-213

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	3	15/04/2021	Minutes – Accessing Fitness to Drive – Advisory Group Meeting	Access granted in part	s47F s22
2.	76	01/2017	Low vision, quality of life and independence	Publicly available document, link below <a href="#">Link</a>	N/A
3.	142	10/2022	Review of the National Standard for Health Assessment of Rail Safety Workers – Consultation Report	Publicly available document, link below <a href="#">Link</a>	N/A
4.	259	10/2022	National Standard for Health Assessment of Rail Workers	Publicly available document, link below <a href="#">Link</a>	N/A

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23- 220

s22(1)(a)

(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 30 March 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) A list of the members of the Strategic Fleet Taskforce
- 2) Minutes or any other records of meetings of the Strategic Fleet Taskforce
- 3) The initial strategic assessment produced by the Strategic Fleet Taskforce and
- 4) The interim report of the Strategic Fleet Taskforce

#### 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 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

## 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 partial access to 9 documents. I have decided not to grant access to one document.

I have provided a list of the members of the Strategic Fleet Taskforce.

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 relevant documents and 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).

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 47 - Documents disclosing commercially valuable information

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body, and
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have ‘exchange value’, in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine “arm’s-length” buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

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

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

As notified to you on 24 of April 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with an affected third. 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.

### 5.3 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 contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The documents set out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

## Purely factual material

Paragraph 6.73 and 6.74 of the FOI Guidelines states that:

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

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

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

## 5.4 Section 47E - Documents affecting certain operations of agencies

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on 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' 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.

## 5.5 Section 47F – Documents affecting personal privacy

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

### Personal Information

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

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

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

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

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

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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

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

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

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.

## 5.6 Section 47G – Business information

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

### Business information

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

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

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

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.

Section 47G(2) of the FOI Act provides that section 47G(1) does not apply to 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.

## 5.7 Public interest considerations

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

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

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

## Factors favouring disclosure

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

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

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

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

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

### Factors weighing against disclosure

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

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - 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:

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

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

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

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

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

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. 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. You indicated in your request that personal information of public servants below the SES level and all email addresses, signatures and direct telephone numbers could be considered irrelevant to the scope of your request. On that basis, I decided this information is irrelevant to your request and it has been deleted under section 22 of the FOI Act as outlined above.

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

## 6 Legislative provisions

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

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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.

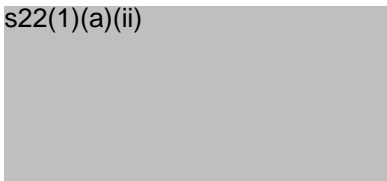
For your reference the Department's Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

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

Yours sincerely

s22(1)(a)(ii)



Andrew Johnson  
Assistant Secretary  
Strategic Fleet  
Date: 26 May 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23220

Doc No.	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	24/10/2022	Approved Strategic Fleet Taskforce - Meeting 1 Minutes_24102022 - Meeting Minutes	Access granted in part	s22
2.	09/11/2022	Approved Strategic Fleet Taskforce - Meeting 2 Minutes_09112022 - Meeting Minutes Attachment A - PowerPoint presentation Maritime activity data Attachment B (Presentation from the Office of Supply Chain Resilience, DISR) Attachment C (Presentation from DCCEEW) Attachment D (Draft discussion paper)	Access granted in part	s22 s47C N/A s33 s47C s47E N/A N/A
3.	22/11/2022	Approved Strategic Fleet Taskforce - Meeting 3 Minutes_22112022 – Meeting minutes	Access granted in part	s22 s47C 47E(d)
4.	09/12/2022	Approved Strategic Fleet Taskforce - Meeting 4 Minutes_09122022 – Meeting Minutes	Access granted in part	s22 s47C s47E(d)
5.	19/12/2022	Approved Strategic Fleet Taskforce - Meeting 5 Minutes_19122022 – Meeting Minutes	Access granted in part	s22 s47C
6.	24/01/2023	Approved Strategic Fleet Taskforce - Meeting 6 Minutes_24012023 – Meeting Minutes	Access granted in part	s22 s47C s47F
7.	08/02/2023	Approved Strategic Fleet Taskforce - Meeting 7 Minutes 08022023- Meeting Minutes Attachment A – Stakeholder map	Access granted in part	s22 s47C s47C
8.	02/03/2023	Approved Strategic Fleet Taskforce - Meeting 8 Minutes_02032023 – Meeting Minutes Attachment A – Presentation Attachment B- Recommendation Report Attachment C - Interim Report Attachment D - Coastal Trading Act Presentation	Access granted in part	s22 s47C s47G s47F s47 s47G s47C s47G
9.	28/03/2023	Approved Strategic Fleet Taskforce - Meeting 9 Minutes 20032023- Meeting Minutes	Access granted in part	s22 s47C
10.	December 2022	Strategic Fleet Taskforce Interim Report	Access not granted	S47C
11.	26/5/23	List of members of the Strategic Fleet Taskforce	Access granted	



**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-260

s22(1)(a)  
(ii)

Dear s22

### Decision on your Freedom of Information Request

I refer to your request of 6 April 2023, to the Classification Board (the Board), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

The document relevant to your request is a document held by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department). As such, under section 16 of the FOI Act, your request was transferred to the Department.

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

### 3 Scope of your request

You requested access to:

The Refused Classification reasoning for the recently released gruesome videogame Postal 4: No Regerts, Website Link: <https://www.classification.gov.au/titles/postal-4-no-regerts>.

### 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 one written discrete document that contains the information you are seeking to access. This information was extracted from the International Age Rating Coalition, Inc (IARC) system.

I have decided to refuse access to 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 exemptions apply to the document are set out below.

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

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

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

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

I note that under an Agreement between the Commonwealth and the affected third party dated 1 October 2021, information of the type contained in the document is identified as confidential information and disclosure of that confidential information is limited. The IARC system is not available to general members of the public and the Department has a Unique Identifier to be able to access it.

As such, I am satisfied that the document consists of information:

- that is specifically identified as being confidential in nature
- that has the quality of confidentiality, is only known to a limited group and is not common knowledge nor in the public domain
- 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
- there is a contractual obligation of confidence between the Department and an affected third party
- disclosure of the information will be without the authority of the affected third party, and

- 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 is exempt from disclosure under section 45 of the FOI Act.

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

### 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 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 contains information that would disclose a trade secret.

### Commercially valuable information

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed

5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have ‘exchange value’, in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine “arm’s-length” buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

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

- 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 4 May 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with an affected third party in this matter. In making my decision on access to the document, I have taken into consideration the exemption submissions made during that consultation process.

For the reasons outlined above, I decided that the document is exempt from disclosure under section 47 of the FOI Act.

### 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. 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.

The Classification Board (the Board) makes decisions relating to the classification of publications, films and computer games under the *Classification (Publications, Films and computer Games) Act 1995* (the Classification Act), the *National Classification Code* and the relevant classification guidelines. Disclosure of the content of the confidential information contained in the document would subvert the classification process, and as such, the property and efficient operations of the Board.

I am satisfied that the document contains information which, if disclosed, would or could reasonably be expected to, have a substantial and an unreasonable effect on an agency's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which the agency conducts those operational activities.

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

#### **5.4 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 competitive commercial activities of an organisation
- could reasonably be expected to prejudice the Board's responsibilities relating to the assessment of computer games under the Classification 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.

## **6 Legislative provisions**

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

## **7 Your review rights**

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

## Further information

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

Yours sincerely

s22(1)(a)(ii)

Maria Vassiliadis  
Assistant Secretary  
Operational Policy/Classification Branch  
Online Safety, Media and Platforms Division

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](mailto:FOI@infrastructure.gov.au)

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-231

s22(1)(a)(ii)

Dear s22(1)(a)

### Decision on your Freedom of Information Request

I refer to your request of 5 April 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).

#### Your request

You requested access to:

“all documentation your department may hold about the CO2 emission and fuel consumption ratings of the Toyota GR86 (2022 or 2023 model year), as would have been submitted and processed for certification of this car make and model for the Australian market. Could any available supporting evidence (e.g. test results) please be included.”

#### 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.

#### 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.

## 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 partial access to 13 documents.

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

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

### 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 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 that would result from the release of the conditionally exempt information would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the information is not well known

- the person to whom the information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the individuals whose personal information would be disclosed as a result of the release of the conditionally exempt information 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.

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.

### **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
  - 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.

### Legislative provisions

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

### Your review rights

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

### 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



Mitchell Cole  
Assistant Secretary  
Vehicle Safety Operations  
Road and Vehicle Safety

Date: 2/06/2023

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

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-231

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	2	14/03/2022	ROVER Compliance Information Form submitted by Toyota for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
2.	2	10/10/2022	ROVER Compliance Information Form submitted by Toyota for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
3.	2	10/10/2022	ROVER Compliance Information Form submitted by Toyota for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
4.	2	14/03/2022	ROVER Compliance Information Form submitted by Toyota for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
5.	2	10/10/2022	ROVER Compliance Information Form submitted by Toyota for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
6.	1	October 2022	Supporting document submitted on a Compliance information form in the ROVER system for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in full	
7.	6	25/02/2022	UN ECE approval document for Regulation No 83. Submitted in ROVER for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
8.	3	25/02/2022	UN ECE approval document for Regulation No 83. Submitted in ROVER for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
9.	3	25/02/2022	UN ECE approval document for Regulation No 83. Submitted in ROVER for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
10.	3	25/02/2022	UN ECE approval document for Regulation No 83. Submitted in ROVER for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F
11.	6	25/02/2022	UN ECE approval document for Regulation No 83. Submitted in ROVER for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in part	s47F



Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
12.	1	October 2022	Supporting document submitted on a Compliance information form in the ROVER system for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in full	
13.	1	October 2022	Supporting document submitted on a Compliance information form in the ROVER system for Make - Toyota, Model - 86 ZN8 on approval VTA-060315	Access granted in full	

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-270

s22(1)(a)(ii)

Dear s22(1)

## Decision on your Freedom of Information Request

I refer to your request of 27 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:

The vehicle identification numbers (VIN) for all vehicles verified and entered onto Register of Approved Vehicles (RAW) where the declared model report author is Sydney AVV Pty Ltd.

#### 1.1 Modification of scope of request

On 8 of May 2023, following consultation with you, you agreed to modify the scope of your request to the following:

[This] has been narrowed to simply provide VIN numbers and up to current date 8 May 2023. I was advised that the previous request was based on concessional RAV entry applications, rather than the RAV entry approvals.

Please note I do not seek to be issued with any private names. Simply the numerical VIN numbers for all vehicles approved and added to RAW.

### 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 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.

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

I have decided to grant partial access to one document.

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 the document 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' would result in the disclosure of 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:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document

- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

I am satisfied that the disclosure of personal information that would result from the release of the conditionally exempt information would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the information is not well known
- the person to whom the information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the individuals whose personal information would be disclosed as a result of the release of the conditionally exempt information are identifiable
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

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

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

## 5.2 Public interest considerations

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

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

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

### Factors favouring disclosure

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

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

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

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

### **Factors weighing against disclosure**

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

- could reasonably be expected to prejudice the protection of number of individuals' right to personal privacy

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

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

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

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

## **6 Legislative provisions**

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

## **7 Your review rights**

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

## **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)



Mitchell Cole  
Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 2/06/2023



**ATTACHMENT A.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-230

s22(1)(a)(ii)

s22(1)(a)(ii)

Dear s22(1)

### Decision on your Freedom of Information Request

I refer to your request of 4 April 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 original application document or documents and any supporting material including emails or letters etc submitted for or on behalf of YLE Enterprises /Empowering Women I Empowering Communities, for a grant of \$213,725 awarded by the Department of Communications and Arts; Indigenous Languages and Arts Program in February 2019.

There appear to be two references for this grant on the Dept of Comms and arts website or they are separate grants. If there are two separate grants then I seek the same information for both.”

#### 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 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

#### 4 Background

Your request notes the two references for this grant on the Department's website. I can confirm that there is only one grant that is in the scope of your request with the published grant amounts showing the GST exclusive and GST inclusive figures.

#### 5 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 partial access to seven 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.

#### 6 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.

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

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

Paragraphs 5.204 and 5.205 of the FOI Guidelines state:

- 5.204 To be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body, and
  - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed
- 5.205 It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine “arm’s-length” buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (out of date information may no longer have any value), and
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price

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

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

As notified to you on 27 April 2023, in accordance with the obligations under section 27 of the FOI Act, the Department has consulted with affected third parties. In making my decision on access to the relevant documents, I have taken into consideration the exemption submissions made during that consultation process.

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

## 6.2 Section 47G – Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (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 person in respect of his or her business or professional affairs. 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.

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.

### 6.3 Public interest considerations

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

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

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

## Factors favouring disclosure

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

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

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

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

## Factors weighing against disclosure

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

- could reasonably be expected to harm the interests of an individual or group of individuals
- could reasonably be expected to have an adverse effect on the lawful business operations and/or commercial activities of the affected third party
- could reasonably be expected to have an adverse effect on the profitability and financial viability of an organisation or undertaking

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

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

## Conclusion – disclosure is not in the public interest

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

## 7 Legislative provisions

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

## 8 Your review rights

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

## 9 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

Marie Gunnell  
Assistant Secretary  
Access and Participation Branch  
Creative Economy and the Arts Group

June 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-230

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	37	11/02/2019	Application to Open Competitive round Indigenous Languages and Arts Program	Access granted in part	s47 s47G
2.	2	12/12/2018	Letter of Support	Access granted in part	s47 s47G
3.	2	11/02/2019	Examples of In-Kind Financial Support	Access granted in part	s47
4.	4	11/02/2019	Expressions of interest in activity	Access granted in part	s47G
5.	3	11/02/2019	Access Australia -accessibility document	Access granted in part	s47
6.	2	30/01/2019	Quote for Services	Access granted in part	s47 s47G
7.	1	08/02/2019	Quote for Services	Access granted in part	s47 s47G



**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

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

Our reference: FOI 23-248

s22(1)(a)(ii)

s22(1)(a)(ii)

Dear s22(

## Decision on your Freedom of Information Request

I refer to your request of 11 April 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 with/from the Department, since March 9, 2023, where it was acting on behalf of the Classification Board or as an intermediary, regarding the book 'Gender Queer'."*

### 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 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

#### 4 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:

- grant access in full to relevant information in 3 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**.

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 47F – Documents affecting personal privacy

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

##### Personal Information

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

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

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

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

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

## Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

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

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

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

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

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 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
  - 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 exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

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

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

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

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

## 6 Legislative provisions

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

## 7 Your review rights

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

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

Maria Vassiliadis  
Assistant Secretary  
Classification Branch  
Online Safety, Media and Platforms Division  
7 June 2023

## 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.	1	09/03/2023	Email correspondence	Access granted in full to relevant information	s22
2.	2	N/A	Timeline	Access granted in part	s22 s47F
3.	1	15/03/23	Letter	Access granted in part	s47F
4.	1	17/03/2023	Email correspondence	Access granted in part	s22 s47F
5.	2	17/03/2023	Letter	Access granted in part	s22 s47F
6.	3	22/03/2023	Email correspondence	Access granted in part	s22 s47F
7.	1	24/03/2023	Email correspondence	Access granted in full to relevant information	s22
8.	2	22/03/2023	Email correspondence	Access granted in part	s22 s47F
9.	1	22/03/2023	Email correspondence	Access granted in full to relevant information	s22



**ATTACHMENT B.****YOUR REVIEW RIGHTS**

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

**Internal review**

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

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

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

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

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

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

Our reference: FOI 23-177

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 24 February 2023, to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act).

#### 1 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 Scope of your request

You requested access to:

All Ministerial Submissions which relate to National Collecting Institutions

On 2 March 2023, you agreed to modify the scope of your request to the following:

All Ministerial Submissions provided to the Minister for the Arts between 22 May 2022 and 24 February 2023 which relate to the National Collecting Institutions

On 13 March 2023, you agreed that any Ministerial Submissions that relate to the Annual Reports and Corporate Plans may be excluded from the FOI request.

#### 3 Decision

I have identified 34 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 24 documents, and
- refuse access to 10 documents in full

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

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

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the relevant documents 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(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.

Section 34(2) of the FOI Act provides that a document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which section 34(1) applies.

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

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

Paragraphs 27-29 of the Cabinet Handbook state:

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

I have had regard to the parts of the documents marked 's34(3)' and am satisfied that they contains information the disclosure of which would reveal a Cabinet deliberation or decision which has not been officially disclosed.

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

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

#### **4.2 Section 42 - Documents subject to legal professional privilege**

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The FOI Guidelines state:

- 5.127 The FOI Act does not define LPP for the purposes of the exemption. To determine the application of this exemption, the decision maker needs to turn to common law concepts of LPP.
- 5.129 At common law, determining whether a communication is privileged requires a consideration of:
- whether there is a legal adviser-client relationship
  - whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
  - whether the advice given is independent
  - whether the advice given is confidential

I am satisfied that the parts of the documents marked 's42' consist of information that is subject to legal professional privilege. I am satisfied that :

- the necessary legal adviser-client relationship exists; the legal adviser was acting in their capacity as a professional legal adviser and the giving of the advice was attended by the necessary degree of independence
- the communication was brought into existence for the dominant purpose of giving or receiving legal advice.
- the advice was provided independently, and
- the advice provided was confidential.

For the reasons outlined above, I decided that the parts of the documents marked 's42' are exempt from disclosure under section 42 of the FOI Act.

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

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

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

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

I am satisfied that the parts of the documents marked 's45' 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 parts of the documents marked 's45' are exempt from disclosure under section 45 of the FOI Act.

### 4.4 Section 47C – Deliberative processes

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

#### Deliberative process

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

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

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

### **Deliberative matter**

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

I am satisfied that the documents marked 's47C' in the schedule and 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 documents marked 's47C' in the schedule and 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.

s47E(c) (selection process)

s47E(d)

### **4.5 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 6.114 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.

I am satisfied that the parts of the documents marked 's47E(c)' relate to the selection process associated with recruitment activities.

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

Paragraph 6.120 of the FOI Guidelines states:

An agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient. For example, in *Re Scholes and Australian Federal Police* [1996] AATA 347, the AAT found that the disclosure of particular documents could enhance the efficiency of the Australian Federal Police as it could lead to an improvement of its investigation process.

Paragraph 6.123 of the FOI Guidelines states that the predicted effect must bear on an agency's 'proper and efficient' operations, that is, an agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

I am satisfied that the 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 an agency's proper and efficient operations. These are operational activities that are being undertaken in an expected and lawful manner, and would not reveal inefficiencies in the way in which an agency conducts those operational activities.

For the reasons outlined above, I decided that the parts of the documents marked 's47E(c) and 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.

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

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

##### **Personal Information**

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

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

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

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

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

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

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

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

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

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

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

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

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person



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

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

- the personal information is not well known
- the personal information marked 's47F' is not availability of the information from publicly accessible sources
- 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 marked 's47F'
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the personal information marked 's47F' to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

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

#### 4.7 Public interest considerations

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

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

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

## Factors favouring disclosure

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

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

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

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would 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 management functions of an agency
- could reasonably be expected to impede the flow of information to the Department as a regulatory agency
- 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

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.

s22 names and irrelevant material (non-NCIs)

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

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

I decided that the documents captured by your request contain material which can reasonably be regarded as irrelevant to your request. This information does not relate to the National Collecting Institutions. As such, an edited copy of those documents has been prepared in accordance with section 22(1)(a)(ii) of the FOI Act. This information is marked 's22' in the documents released to you.

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

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

## **5 Material taken into consideration**

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

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

## **6 Legislative provisions**

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

## 7 Your review rights

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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

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

Yours sincerely

s22(1)(a)(ii)

Greg Cox  
First Assistant Secretary  
Office of the Arts

5/6/23

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-177

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	21 Dec 2022	Ministerial Submission MS22-001918	6	Release in part	s47E(d) s47C
2.	16 Sept 2022	Ministerial Submission MS22-001762	5	Release in part	s22 s47E(d)
3.	10 Feb 2023	Ministerial Submission MS23-000813	41	Release in part	s22
4.	16 July 2022	Ministerial Submission MS22-001266	11	Exempt in full	47E(d)
5.	8 Dec 2022	Ministerial Submission MS22-002490	57	Release in part	s22 s47E(d)
6.	29 June 2022	Ministerial Submission MS22-001042	7	Release in part	s22 s47C s42
7.	26 Sept 2022	Ministerial Submission MS22-001566	16	Release in part	s22 s45 s47C s47E(d)
8.	10 Aug 2022	Ministerial Submission MS22-001480	39	Exempt in full	s34(1)(c) s34(1)(d)
9.	21 Nov 2022	Ministerial Submission MS22-002226	207	Exempt in full	s34(1)(c) s34(1)(d)
10.	16 Feb 2023	Ministerial Submission MS23-000177	13	Release in part	s22 s34(3) s47C s47F
11.	16 Feb 2023	Ministerial Submission MS23-002608	10	Released in par	s22 s47C s47F
12.	16 Feb 2023	Ministerial Submission MS23-002517	18	Released in part	s22 s47C s47E(d) s47F
13.	4 Aug 2022	Ministerial Submission MS22-001314	11	Released in part	s22 s34(3) s47C s47E(d) s47F
14.	31 Aug 2022	Ministerial Submission MS22-001589	8	Release in part	s22 s34(3) s47F
15.	16 June 2022	Ministerial Submission MS22-000913	17	Release in part	s22 s47C s47E(d) s47F
16.	8 Sept 2022	Ministerial Submission MS22-001231	10	Release in part	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
					s47C s47F
17.	19 Dec 2022	Ministerial Submission MS22-002303	10	Release in part	s22 s34(3) s47C s47E(d) s47F
18.	21 Oct 2022	Ministerial Submission MS22-001996	11	Release in part	s22 s34(3) s47C s47F
19.	28 Nov 2022	Ministerial Submission MS22-002206	25	Exempt in full	s22 s34(2) s47C s47E(d) s47F
20.	18 Nov 2022	Ministerial Submission MS22-002121	4	Release in part	s22 s47C
21.	15 Dec 2022	Ministerial Submission MS22-005079	5	Release in part	s22 s34(3) s47C s47E(c) s47E(d)
22.	24/10/22	Ministerial Submission MS22-002046	10	Release in part	s22 s34(3) s47C s47F
23.	13/9/22	Ministerial Submission MS22-001633	17	Release in part	s22 s34(3) s47C s47F
24.	4 Aug 2022	Ministerial Submission MS22-001250	21	Release in part	s22 s34(3) s47F
25.	15 Nov 2022	Ministerial Submission MS22-002083	7	Release in part	s22 s34(3) s47C s47F
26.	2 Sept 2022	Ministerial Submission MS22-001315	17	Release in part	s22 s34(3) 47C s47F
27.	29/9/22	Ministerial Submission MS22-001789	14	Release in part	s22 s34(3) s47C s47F

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
28.	18/10/22	Ministerial Submission MS22-001625	12	Release in part	s22 s34(3) s47C s47F
29.	21 June 2022	Ministerial Submission MS22-000868	11	Exempt in full	s47C s47F
30.	23 Sept 2022	Ministerial Submission MS22-001640	37	Exempt in full	s47C s47F
31.	8 Sept 2022	Ministerial Submission MS22-001547 Attachment C: duplicate of Attachment C to document 30 above Attachment D: duplicate of Attachment D to document 30 above.	8	Exempt in full	s47C s47F
32.	12 Dec 2022	Ministerial Submission MS22-002492 Attachment C: duplicate of Attachment C to document 30 above Attachment D: duplicate of Attachment D to document 30 above.	6	Exempt in full	s47C s47F
33.	4 Oct 2022	Ministerial Submission MS22-001744 Attachment C: duplicate of Attachment C to document 30 above Attachment D: duplicate of Attachment D to document 30 above.	7	Exempt in full	s47C s47F
34.	30 Sept 2022	Ministerial Submission MS22-001844 Attachment C: duplicate of Attachment C to document 30 above Attachment D: duplicate of Attachment D to document 30 above.	12	Exempt in full	s47C s47F

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

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

### Internal review

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

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

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

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

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

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

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

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).





## Australian Government

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

Our reference: FOI 23-255

s22(1)(a)(ii)

Dear s22(1)(a)  
(ii)

### Decision on your Freedom of Information Request

I refer to your request of 21 April 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. Any Ministerial Briefs that go to fuel efficiency standard, CO2 standards and electric vehicles.
2. Any correspondence from the following entities that relate to fuel efficiency standards and/or CO2 standards and/or electric vehicles:
  - the Australian Automotive Association (AAA)
  - Federal Chamber of Automotive Industries (FCAI)
  - Australian Automotive Dealers Association (AADA)
  - Toyota'

#### 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 5 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.

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.

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' in the schedule are exempt under section 34 of the FOI Act.

## 4.2 Section 47C – Deliberative processes

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

### Deliberative process

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

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

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

### Deliberative matter

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

I am satisfied that the 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 are conditionally exempt from disclosure under section 47C of the FOI Act.

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

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

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

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure

of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the person to whom the personal information relates is not known to be (or to have been) associated with the matters dealt with in the document
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause stress to the individuals concerned
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the 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.

#### **4.4 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 would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

##### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The documents marked 's47G' in the schedule contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

##### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the documents marked 's47G' in the schedule are conditionally exempt from disclosure under section 47G of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **4.5 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 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
  - 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.

### 4.6 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.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## 5 Material taken into consideration

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Tristan Kathage  
Assistant Secretary  
Reducing Surface Transport emissions Branch  
Surface Transport Emissions and Policy Division

( 9 June 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-255

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	23/11/2022	MB22-000816	8	Partial access granted	S47G s47F
2.	16/11/2022	Email: Hyundai CEO and COO meeting request	3	Partial access granted	S47F S22
3.	23/11/2023	Nation Electric Vehicle Strategy	18	Access refused in full	S47G(1) (a)
4.	21/03/2023	Email: Meeting with NEVS and FES	7	Partial access granted	S47F S22
5.	24/03/2023	Email - Meeting	2	Partial access granted	S47F S22
6.	3/04/2023	April group Briefing	2	Access refused in full	47(c)(1)
7.	5/04/2023	Test vehicle target list	3	Access refused in full	S47G(1) (a)
8.	12/04/2023	Email: Proposed FCAI-DITRDCA meeting fuel efficiency	2	Partial access granted	S47F S22
9.	18/04/2023	ERC Submission brief – Reducing Surface Transport Emissions	2	Access refused in full	34(1)(c)
10.	21/04/2023	Email: Invitation to the 2023 Toyota Hydrogen Showcase	1	Access granted in full	
11.	25/01/2023	Reducing Transport Emissions Budget Submission, including a Fuel Efficiency	22	Access refused in full	47(c)(1)
12.	20/01/2023	Reducing Transport Emissions	5	Access refused in full	47(c)(1)
13.	21/03/2023	Fuel Efficiency Standards - proposed consultancy	2	Access refused in full	47(c)(1)

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 23-247

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 9 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. Internal documents prepared for the Secretary of the Department of Infrastructure, Transport Regional Development, Communications and the Arts relating to the Heavy Vehicle National Law steering committee.
2. Minutes from the Heavy Vehicle National Law steering committee.

Date range for these documents are from 1 September 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 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

#### 4 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 one document
- grant partial access to 11 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 45 - Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action by a person for breach of confidence.

Paragraph 5.159 of the FOI Guidelines states that to found an action for breach of confidence, the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment

I am satisfied that the parts of the documents marked 's45' 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 parts of the documents marked 's45' are exempt from disclosure under section 45 of the FOI Act.

## 5.2 Section 47B - Documents affecting Commonwealth-State relations

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Paragraph 6.31 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, <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.

Having regard to the above, I am satisfied that s47B is applicable here.

## Consultation with a State or Territory

In making my decision, I consulted with the relevant State and Territory governments, and I considered any concerns raised by the relevant States and Territory.

For the reasons outlined above, I decided that the parts of the documents marked 's47B' are conditionally exempt from disclosure under section 47B of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

### 5.3 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 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' 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 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.



I have consulted with affected third parties regarding the disclosure of their personal information, and I have considered any concerns raised by those individuals during the course of making my decision.

For the reasons outlined above, I decided that the parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### **5.4 Section 47G – Business information**

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

#### **Business information**

Paragraph 6.184 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.192 of the FOI Guidelines further states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.194 of the FOI Guidelines states that 'profession' is not static, and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of the documents marked 's47G' contain business affairs information that is relevant to the business, commercial or financial affairs of an organisation or undertaking. This information is relevant to the profitability and financial viability of an organisation or undertaking, and does not relate to its private or internal affairs.

As such, I am satisfied that this information is business information.

#### **Unreasonable adverse effect of disclosure**

Paragraph 6.187 of the FOI Guidelines states that the presence of 'unreasonably' in section 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of section 47G(1)(a); but this does not amount to the public interest test of section 11A(5) which follows later in the decision process.

Paragraph 6.188 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of an organisation or undertaking. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the profitability and ongoing viability of the affected third-party business outweighs the public interest in the disclosure of this information.

### **Prejudice future supply of information**

Paragraphs 6.198-6.200 of the FOI Guidelines state:

- 6.198 This limb of the conditional exemption comprises two parts:
- a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government
  - the reduction will prejudice the operations of the agency
- 6.199 There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be sufficient to prejudice the future supply of information. Disclosure of the person's identity may also be conditionally exempt under s 47F (personal privacy). In these cases, consideration should be given to whether the information may be disclosed without also disclosing the identity of the person supplying the information.
- 6.200 Where the business information in question can be obtained compulsorily, or is required for some benefit or grant, no claim of prejudice can be made. No prejudice will occur if the information in issue is routine or administrative (that is, generated as a matter of practice).

I have consulted with the affected third party regarding the relevant business affairs information, and in making my decision, I have considered submissions made.

For the reasons outlined above, I decided that the 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.

### **5.5 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 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
  - 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:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made

- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

### **8 Publication of material released under the FOI Act**

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### **Further information**

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Assistant Secretary  
Land Transport Policy Branch  
Surface Transmissions Emissions & Policy Division

Date: 22 June 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-247

Doc No.	Num of Pages	Date of document	Description of document	Decision on access	Provision of FOI Act
1.	2	18 November 2022	FINAL Outcomes - Meeting 1 - 14 Nov 2022.docx	Access granted in part	s47C s47B
2.	3	16 December 2022	FINAL Outcomes - Meeting 2 - 16 Dec 2022.docx	Access granted in full	
3.	3	22 February 2023	FINAL Outcomes - Meeting 3 - 6 Feb 2023	Access granted in part	s47 s47B s45 s47C
4.	4	22 March 2023	FINAL Outcomes - Meeting 4(a) - 20 Mar 2023	Access granted in part	s47C
5.	2	27 March 2023	FINAL Outcomes - Meeting 4(b) - 22 Mar 2023	Access granted in part	s47B s47C
6.	19	9 April 2023		Access denied in full	s47C, s47B
7.	5	18 March 2023	HVNL reform – non-legislative leads	Access granted in full	
8.	4	14 December 2022	Chairs Brief - Meeting 14 November 2022	Access granted in part	s47C s47B
9.	6	14 December 2022	Chairs Brief - Meeting 16 December 2022	Access granted in part	s47C s45 s47B s47G
10.	7	3 February 2022	Chairs Brief - Meeting 6 Feb 2023	Access granted in part	s47C s47B s45
11.	5	20 March 2023	Chairs Brief - Meeting 20 Mar 23	Access granted in part	s47C s47B s47G
12.	7	1 May 2023	Chairs Brief - Meeting 1 May 23	Access granted in part	s47 s27B  S47G s47C
13.	4	1 May 2023	Draft Outcomes - Meeting 5 - 1 May 2023	Access granted in part	s47C s47B

Released under the FOI Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

## ATTACHMENT B.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 23-295

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 17 May 2023, to the National Faster Rail Agency (NFRA), seeking access to documents under the *Freedom of Information Act 1982* (FOI Act). On 13 June 2023 you were advised that as a result of Machinery of Government Changes, the subject matter of your request is now more closely related to the functions of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) and as such, your request was transferred to the Department under section 16 of the FOI Act.

### 1 Your request

You requested access to:

*Correspondence between the Queensland Department of Transport and Main Roads and the NFRA dated 1 June 2022 onwards in respect of the Brisbane to Gold Coast corridor investigation, specifically in respect to investigations of a possible extension from Varsity Lakes to the Gold Coast Airport. This request includes emails, letters, text messages, electronic messages (such as Teams, Signal and WhatsApp) and other forms of correspondence, and would include attachments to correspondence.*

### 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 is an email dated 5 April 2023 to the National Faster Rail Agency from the Queensland Government together with two associated attachments.

I have decided to refuse access to one document in full.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to the document relevant to your request are set out below.

### 4.1 Section 47B - Documents affecting Commonwealth-State relations

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

Paragraph 6.31 of the FOI Guidelines states that a document does not have to have been supplied or written by the Commonwealth, a State agency or a State authority to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity. It is also not a relevant consideration that all the parties referred to in the document are aware of the document or of the reference to the particular agency.

Paragraphs 6.33-6.35 of the FOI Guidelines also state:

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth

6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects

6.35 The potential damage need not be quantified, but the effect on relations arising from the disclosure must be adverse.

Having regard to the above, I am satisfied that the document relating to your request, would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

In relation to the test *would or could reasonably be expected*, paragraph 5.16-5.18 of the FOI Guidelines state:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word 'could' in this qualification is less stringent than 'would', and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.



- 5.18 The mere risk, possibility or chance of prejudice does not qualify as a reasonable expectation. There must, based on reasonable grounds, be at least a real, significant or material possibility of prejudice.

I am satisfied that damage that would or could reasonably be expected to occur, based on reasonable grounds, is real, significant or a material possibility.

### Consultation with a State or Territory

In making my decision, I consulted with the relevant State government, and I took into account any concerns raised by the relevant State.

For the reasons outlined above, I decided that the document relating to your request, 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.

## 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 relating to your request 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 relating to your request, 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 Public interest considerations

Pursuant to section 11A(5) of the FOI Act, I must give access to conditionally exempt information unless access to that information at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the conditionally exempt information would be contrary to the public interest.

I note that paragraph 6.5 of the FOI Guidelines states that the public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

#### Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to conditionally exempt information in the public interest include whether access to that information would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would inform debate on a matter of public importance
- would promote effective oversight of public expenditure
- would not allow you access to your own personal information.

#### Factors weighing against disclosure

I consider that the following factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

- would adversely affect the administration of a continuing Commonwealth-State project
- would damage the continued level of trust or co-operation in existing inter-government working relationships

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

In making my decision, I had regard to the following:

- the terms of your request
- the content of the document captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT A**.

## Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

Maxine Ewens  
Assistant Secretary  
QLD, NT, WA Branch  
Land Transport Infrastructure Division

Date: 5 July 2023

## ATTACHMENT A.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**  
**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 23-258

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 28 April 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

On behalf of your client s22(1)(a)(ii), you requested access to:

All personnel and employments documents relating to s22(1)(a)(ii) (s22(1)(a)(ii)) from the date of first employment to date, including but not limited to:

- a) your complete employment file
- b) copies of all pay-slips, pay dockets, pay-advice or memoranda, group certificates, group tax certificates, tax stamp sheets and all documents evidencing payment of bonuses, overtime, commission, allowances and sick pay; and
- c) any documents relating to any Comcare claim made by the Claimant.

### 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 44 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 44 documents in full.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that an exemption applies to the documents relevant to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that the documents relevant to your request includes personal information about an individual.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the 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 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.

For the reasons outlined above, I decided that the documents relevant to your application 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 an individual's right to personal privacy
- You indicated in your initial request that you are acting on behalf a party to potential legal proceedings by the individual whose personal information is contained in the documents and that the documents being requested under the FOI Act are required for the purposes of these legal proceedings.
- In considering whether disclosure would be contrary to the public interest, I have taken into consideration the fact that an appropriate method for obtaining documents associated with legal proceedings is available to you through court initiated/approved document discovery processes.
- Having taken into consideration this alternative and more appropriate means available to you, I consider that the balance of maintaining an individual's right to personal privacy under the provisions of the FOI Act outweighs any public interest in the disclosure of these documents to you in this way.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain information concerning them

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

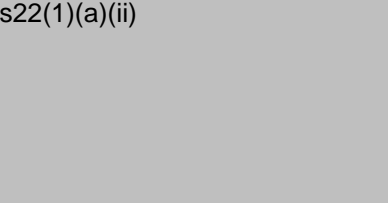
Your review rights in relation to this decision are set out at **ATTACHMENT A**.

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Stephanie Bourke  
Assistant Secretary  
Human Resources and Property Branch

14 July 2023

**ATTACHMENT A.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 24-001

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

## Decision on your Freedom of Information Request

I refer to your request of 3 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'm trying to get copies of as many records and certificates or numbers and dates at least, to build up a history of my Blue 1966 Ford Mustang.*

s22(1)(a)(ii)

### 2 Authority to make decision

I am authorised by the Secretary to make decisions in relation to Freedom of Information requests under section 23(1) of the FOI Act.

### 3 Decision

Searches were conducted of the Department's information holdings for records relevant to your request, and we have established that the files related to VIN – 6R07A237893 under Import Approval 8651/06 were destroyed in accordance with the department's Records Disposal Authority. All physical files which pre-date 2002 have been destroyed.

However, some information relating to your request 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 document that contains information you are seeking to access.

I have decided to grant partial access to one document.

## 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of document relevant to your request are set out below.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about an individual.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the document would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the conditionally exempt personal information is not available from publicly accessible sources
- the individual whose personal information is contained in the documents is 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 individual would not expect the information to be placed in the public domain, and detriment may be caused to the individual to whom the information relates, and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

#### 4.2 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
  - 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 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.

As I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

## **5 Material taken into consideration**

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

## **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT A**.

## 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Assistant Secretary  
Vehicle Safety Operations Branch  
Road and Vehicle Safety Division

Date: 14 July 2023

## ATTACHMENT A.

## YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review of it.

### Internal review

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

### Information Commissioner review or complaint

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



**Australian Government**

---

**Department of Infrastructure,  
Transport, Regional Development,  
Communications and the Arts**

Our reference: FOI 23-312

s22(1)(a)(ii)

Dear s22(1)(a)

## 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:

*A copy of any correspondence to Qatar Airways from the Department related to the number of passengers the airline was allowed to carry into Melbourne Airport on 2 February 2021.*

### 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.

### 4.1 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

#### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals.

#### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision-making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within the documents would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the conditionally exempt personal information is not well known
- the conditionally exempt personal information is not available from publicly accessible sources
- the individuals whose personal information is contained in the documents are identifiable
- no further public purpose would be achieved through the release of the personal information, noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and

- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I decided that parts of the documents marked 's47F' are conditionally exempt from disclosure under section 47F of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 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

- 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



- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

## 6 Legislative provisions

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, 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](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)

**Jim Wolfe**  
**Assistant Secretary**  
**International Aviation**  
**International Aviation, Technology and Services Division**

19 July 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 23-312

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	21 January 2021	Subject: Qatar Airways Northern Winter 2020-21 timetable variation - decision of condition 1 Feb -14 Feb Email from the Department to Qatar Airways	5	Partial access granted	s.22(1)(a)(ii) s.47F
2.	28 January 2021	Subject: Qatar Airways Northern Winter 2020-21 timetable variation - decision of condition 1 Feb -14 Feb (decision) Email from the Department to Qatar Airways	6	Partial access granted	s.22(1)(a)(ii) s.47F

**ATTACHMENT B.****YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for a review of it.

**Internal review**

You can request an internal review within 30 days of receiving this decision. An internal review will be conducted by a different departmental officer from the original decision-maker.

No particular form is required to apply for review although it will assist the Department if you are able to set out the grounds on which you believe that the original decision should be changed.

Applications for internal review can be sent to [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 23-301

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 the report of the review of the National Partnership Agreement on Land Transport Infrastructure Projects produced in accordance with clause 72 of the National Partnership Agreement on Land Transport Infrastructure Projects (2019 - 2024) and in accordance with schedule E, Clause 23 of the Intergovernmental Agreement (IGA) on Federal Financial Relations; or
- b) If the document referred to under (a) does not exist, a copy of any draft reports of the review of the National Partnership Agreement on Land Transport Infrastructure Projects produced in accordance with clause 72 of the National Partnership Agreement on Land Transport Infrastructure Projects (2019 - 2024) and in accordance with schedule E, Clause 23 of the IGA on Federal Financial Relations; or
- c) If the documents referred to under (a) and (b) do not exist, a copy of any correspondence issued by the Department related to the commissioning of a review of the National Partnership Agreement on Land Transport Infrastructure Projects produced in accordance with clause 72 of the National Partnership Agreement on Land Transport Infrastructure Projects (2019 - 2024) and in accordance with schedule E, Clause 23 of the Intergovernmental Agreement on Federal Financial Relations.

#### 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. I have decided to refuse access in full to the 10 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 the documents relevant to your request are exempt 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 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 are exempt under '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 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:

- 
- (a) access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
  - (b) access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
  - (d) access to the conditionally exempt information could result in confusion or unnecessary debate.

### **Conclusion – disclosure is not in the public interest**

For the reasons set out above, after weighing all public interest factors for and against disclosure, I decided that, on balance, disclosure of the conditionally exempt information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure of the conditionally exempt information is outweighed by the benefit to the public of withholding that information.

### **5 Material taken into consideration**

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).

### **7 Your review rights**

Your review rights in relation to this decision are set out at **ATTACHMENT A**.



**Further information**

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Anita Langford  
Assistant Secretary  
Program, Policy and Budget Branch  
Land Transport Infrastructure Division

Date: 21 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 23-301

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	23 May 2023	Terms of Reference for Independent Review of the National Partnership Agreement on Land Transport Infrastructure Projects 2019-2024		Access refused in full	s47C
2.	14 Apr 2023	Email	1	Access refused in full	s47C
3.	5 May 2023	Email	1	Access refused in full	s47C
4.	11 May 2023	Email	1	Access refused in full	s47C
5.	16 May 2023	Email	1	Access refused in full	s47C
6.	23 May 2023	Email	1	Access refused in full	s47C
7.	26 May 2023	Email	1	Access refused in full	s47C
8.	26 May 2023	Email	1	Access refused in full	s47C
9.	30 May 2023	Email	1	Access refused in full	s47C
10.	6 June 2023	Email	1	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](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

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/](http://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/)
- via email to [foidr@oaic.gov.au](mailto: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](http://www.oaic.gov.au/freedom-of-information/foi-review-process).



## Australian Government

### Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Our reference: FOI 24-121

s22(1)(a)(ii)

Dear s22(1)(a)(ii)

### Decision on your Freedom of Information Request

I refer to your request of 25 September 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 briefing notes, talking points, correspondence and communications, including by email, text message, whatsapp or other digital messaging service, between the dates of 29 May 2023 and 19 July 2023, relating to media enquiries received by either the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, or by the Minister for Infrastructure, Transport, Regional Development and Local Government (the Minister), or by staff of the Minister for Infrastructure, Transport, Regional Development and Local Government, regarding the application by Qatar Airways/ Qatar Civil Aviation Authority for additional air services to Australian major airports, including:

- a) communications between the Minister and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts; and
- b) communications between the staff of the Minister and officials of 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 4 documents that are relevant to your request. These documents were in the possession of the Department when your request was received.

I have decided to grant partial access to 4 documents.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

### 4 Finding of facts and reasons for decision

My findings of fact and reasons for deciding that exemptions apply to parts of documents relevant to your request are set out below.

#### 4.1 Section 47C – Deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency; or a Minister; or the Government of the Commonwealth.

#### Deliberative process

Paragraph 6.58 of the FOI Guidelines states that deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Paragraph 6.59 of the FOI Guidelines states that the '*deliberative process*' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

#### Deliberative matter

Paragraph 6.63 of the FOI Guidelines states that '*deliberative matter*' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words 'opinion, advice or recommendation, consultation or deliberation'.

I am satisfied that parts of 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 document sets out the weighing up and evaluation of competing arguments, and can be characterised as the thinking process of the Department or the process of reflection upon the wisdom and expediency of a particular proposal.

For the reasons outlined above, I decided that parts of the documents marked 's47C' in the schedule is conditionally exempt from disclosure under section 47C of the FOI Act.

Where information is found to be conditionally exempt, I must give access to that information unless access at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

## 4.2 Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

### Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, section 6 of the Privacy Act provides that *personal information* means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.131 of the FOI Guidelines states that for particular information to be personal information, an individual must be identified or reasonably identifiable.

Paragraph 6.130 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

An individual is a natural person rather than a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the documents marked 's47F' includes personal information about a number of individuals. This information consists of the names and direct contact details for a number of private individuals who are not public servants.

### Unreasonable Disclosure of Personal Information

Section 47F(2) of the FOI Act provides that, in determining whether the disclosure would involve the unreasonable disclosure of personal information, I must have regard to the following matters:

- (a) the extent to which the information is well known
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- (c) the availability of the information from publicly accessible sources
- (d) any other matters that the agency or Minister considers relevant.

Paragraph 6.138 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984]* AATA 437 at paragraph 259, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.142 and 6.143 of the FOI Guidelines state:

6.142 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.143 As discussed in the leading s 47F IC review decision of *'FG' and National Archives of Australia [2015]* AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

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:

- could reasonably be expected to prejudice the early developmental stages of forming opinion, advice and recommendations during deliberative processes by creating an environment in which there is a chilling effect on the open consideration of all options that have potential to be put forward
- could reasonably be expected to prejudice the protection of a number of individuals' right to personal privacy
  - The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how we must handle and manage personal information. I consider it is firmly in the public interest that we uphold the rights of individuals to their own privacy and meet our statutory obligations under the Privacy Act.
  - I note that the substance of the information that is relevant to your request has been released to you and disclosure of the conditionally exempt personal information would not provide you with any further insight into the workings of government beyond that substantive information.

In making my decision, I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act, which are:

- access to the conditionally exempt information could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- access to the conditionally exempt information could result in any person misinterpreting or misunderstanding that information
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made

- (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.

In addition, as I decided that some information you have requested is exempt from disclosure, I have prepared an edited copy of the documents being released by deleting the exempt information under section 22(1)(a)(i) of the FOI Act.

### **5 Material taken into consideration**

In making my decision, I had regard to the following:

- the terms of your request
- the content of the documents captured by your request
- the provisions of the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from departmental officers with responsibility for the subject matter contained in the documents captured by your request
- submissions from third parties consulted about documents which contain personal information concerning them

### **6 Legislative provisions**

The FOI Act, including the provisions referred to in my decision, are available on the Federal Register of Legislation website: [www.legislation.gov.au/Series/C2004A02562](http://www.legislation.gov.au/Series/C2004A02562).



## 7 Your review rights

Your review rights in relation to this decision are set out at **ATTACHMENT B**.

## 8 Publication of material released under the FOI Act

Where I have decided to release documents to you, we may also publish the released material on our Disclosure Log. We will not publish personal or business affairs information where it would be unreasonable to do so.


For your reference our Disclosure Log can be found here: [www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log](http://www.infrastructure.gov.au/about-us/freedom-information/freedom-information-disclosure-log).

### Further information

If you require further information regarding this decision, please contact the Department's FOI Section at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au).

Yours sincerely

s22(1)(a)(ii)



Susan Charles  
Assistant Secretary  
Communication, Ministerial and Parliamentary Services Branch  
Communication, Research, Strategy and Parliamentary Division

Date: 23 November 2023

## ATTACHMENT A.

## SCHEDULE OF DOCUMENTS FOI 24-121

Doc No.	Date of document	Description of document	Num of Pages	Decision on access	Provision of FOI Act
1.	1 June 2023	Email subject: International flight capacity	4	Partial access granted	s22 s47F s47C
2.	19 July 2023	Email subject: Transport/aviation: Decision to deny Qatar Airways' addition bilateral rights	3	Partial access granted	s22 s47F
3.	30 June 2023	Email subject: Qatar	2	Partial access granted	s22 s47F s47C
4.	2 June 2023	Email subject: International flight capacity	4	Partial access granted	s22 s47F 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](mailto:FOI@infrastructure.gov.au)

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you if you remain dissatisfied with the decision.

**Information Commissioner review or complaint**

You have the right to seek a review by the Information Commissioner of this decision.

An application for IC review must be made in writing to the Office of the Australian Information Commissioner (OAIC) within 60 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: [www.oaic.gov.au/freedom-of-information/foi-review-process](http://www.oaic.gov.au/freedom-of-information/foi-review-process).