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Australian Government Office of Parliamentary Counsel

Our ref: T23/33

Alex Pentland

By email to: foi+request-10118-766eb4bd@righttoknow.org.au

Dear Alex

Freedom of information request no. 5-2023

1 The purpose of this letter is to advise of my decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

2 On 27 March 2023, you sought access to:

- (a) correspondence and documents held by the Office of Parliamentary Counsel relating to the “Currency (Restrictions on the Use of Cash) Bill 2019”.

Decision and reasons for decision

3 I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

4 Our office have identified documents that meet the description of your request. These comprise draft legislation and correspondence for the purposes of giving or receiving legal advice.

5 These documents are subject to legal professional privilege. The agency entitled to claim legal professional privilege in relation to the documents is the Department of the Treasury. The Department of the Treasury has confirmed that it does not waive the privilege in the documents.

Documents are exempt documents (section 42)

6 Under section 42 of the FOI Act, 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.

7 The documents you are seeking comprise draft legislation and correspondence for the purposes of giving or receiving legal advice. The Federal Court found in *State of New South Wales v Betfair* [2009] FCAFC 160, legal professional privilege applies to drafting instructions, draft legislation and related communications between the instructing agency and third parties in relation to the drafting.

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8 I have refused access to all documents in full, on the basis that these documents are exempt documents under section 42 (documents subject to legal professional privilege).

9 I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act;
- email from the Department of the Treasury dated 3 April 2023.

Your review rights

10 If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

11 Under section 54 of the FOI Act, you may apply for an internal review of my decision. Your application must be made within 30 days after the date of this letter.

12 An internal review will be conducted by a different officer. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be lodged in one of the following ways:

email: foi@opc.gov.au

post: FOI Coordinator, Locked Bag 30, Kingston ACT 2604

13 If you choose to seek an internal review, you will subsequently have a right to apply for Information Commissioner review of the internal review decision.

Information Commissioner review

14 Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the date of this letter, and be lodged in one of the following ways:

online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

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15 More information about Information Commissioner review is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

FOI Complaints

16 If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney 2001

17 More information about complaints is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

18 If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, more information is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely



Stephen Campbell
General Manager Corporate
20 April 2023