



'SF'

Via email: [foi+request-10729-bffd3496@righttoknow.org.au](mailto:foi+request-10729-bffd3496@righttoknow.org.au)

Dear SF

### Decision on your Freedom of Information request

I refer to your request, received by the Department of Agriculture, Fisheries and Forestry (**department**) on 3 October 2023 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

'I request Document 134 in LEX-29913 to be released in full - In particular the page is titled "INDEPENDENT ASSESSMENT - REPORT TO GOVERNMENT BY 30 SEPTEMBER 2023" claims a s 47C(1) exemption.'

#### My decision

The department holds one document (totalling 7 pages) that relates to your request.

I have decided to:

- grant you **part access** to one document (document 1) with some of the content removed.

I have decided that certain parts of the document that you have requested are exempt under the FOI Act as they contain:

- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C(1)); and
- personal information about other people (section 47F(1)).

On 4 October 2023, the department acknowledged your request and advised you that we would not include personal details about our staff. You did not contact the department again about this.

Please see the schedule at **Attachment A** to this letter for details about the document and the reasons for my decision.

#### How we will send your document to you

The document is attached.

## You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to [foi@aff.gov.au](mailto:foi@aff.gov.au).

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website [www.oaic.gov.au](http://www.oaic.gov.au) or phone the OAIC on 1300 363 992.

## Further assistance

If you have any questions, please email [foi@aff.gov.au](mailto:foi@aff.gov.au).

Yours sincerely



Morag Donaldson  
A/g Assistant Secretary  
Agricultural Traceability Branch  
Trade and International Division  
31 October 2023



**LIST OF DOCUMENTS FOR RELEASE**

**LEX-30317**

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-7	06/12/2022	Independent assessment overview	Release in part	s 47C(1) s 47F(1)	Pages 2-5: information in relation to deliberative processes exempt under s 47C(1). Page 7: personal information exempt under s 47F(1).

## REASONS FOR DECISION

### What you requested

'I request Document 134 in LEX-29913 to be released in full - In particular the page is titled "INDEPENDENT ASSESSMENT - REPORT TO GOVERNMENT BY 30 SEPTEMBER 2023" claims a s 47C(1) exemption.'

### What I took into account

In reaching my decision, I took into account:

- your request dated 3 October 2023;
- other correspondence from you on 26 October 2023;
- the document that falls within the scope of your request;
- information about:
  - the nature of the document; and
  - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

### Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that certain parts of the document that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to that document are discussed below.

#### Section 47C of the FOI Act – Deliberative processes

I have applied the conditional exemption in section 47C to document 1.

Section 47C of the FOI Act provides:

'(1) A document is conditionally exempt if its disclosure under this Act 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:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth.'

Paragraph 6.58 of the Guidelines relevantly provides:

A 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 bearing upon one's course of action. In short, deliberative processes involved in the functions of an agency are thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

The document is an overview of the live sheep phaseout project, presented at a meeting with the Minister. It contains information relating to options forward and proposed timeframes of the phaseout project, opinions on implementation options, and deliberations on possible outcomes and proposed responses to these. This information was provided for the purpose of briefing the Minister and providing the opportunity for discussion and deliberation on the phaseout project.

I note that as part of your request, you have submitted the following in relation to why you believe section 47C(1) does not apply to the document, particularly to the 'implementation options to explore could include' section of page 4 of the document:

*'...At the time the document was created that list of "options to explore could include" is for a panel that had yet to be formed or selected. According to their published TOR, the panel were able to determine their own approach to their task. They were appointed on an "Independent" basis and not subject to any directions within that document. There were no parts of that document the panel were required to consider.*

*As such, at the time of creation it was not a deliberative matter that was for an agency, a Minister, the Government of the Commonwealth. No one was required to consider it and no decision was to be made from it.*

*As the OAIC advice states "if the material was obtained BEFORE there was a known REQUIREMENT that the material WOULD be considered during a deliberative process, that material would not be deliberative matter."*

*There was and remains, no "requirement" to consider that section of the document. The language is clear - "options to explore COULD include". As there is no requirement for that part of the document to be considered, the exemption cannot be relied upon.*

*It was merely something a panel may wish to explore in the future, which comes under "purely factual" material and not any matter under deliberation. There is also no evidence that this list was provided to the panel.*

*Given the Panel's independence, 6.66 in the OAIC guide is made out and it was not "matter that was not obtained, prepared or recorded in the course of, or for the purposes of, a deliberative process..."*

I do not accept this reasoning as the document was not created for the purpose of the independent panel or provided to the independent panel for consideration. Rather, as noted above, it was created by the department for the purpose of briefing the Minister. The document was presented at a meeting with the Minister to provide options and proposals for the Minister's consideration and deliberation, at a time when the live sheep phase out panel did not exist, and the proposal was to appoint an independent person rather than a panel. As such, I consider that disclosure of certain parts of the document would disclose opinion or recommendation

prepared by the department in the course of, or for the purposes of, the deliberative processes involved in the functions of the department and the Minister.

I note that you have subsequently provided further correspondence as follows:

*'I would like to note that the document requested was discussed at senate estimates.*

*Relevantly the minister said as per Hansard:*

*Senator Watt: I don't think it would be fair, and we're not necessarily doing this, but it's not as if the department was giving me advice that these are the things we should do.*

*It is clear that the minister did not consider the briefing this to be deliberative material.'*

I do not accept this submission. I understand that the quote from Minister Watt which you have provided is in the context of the 'implementation options to explore could include' section of page 4 of the document. These implementation options were not, as the Minister has noted, advice provided by the department to the Minister, and accordingly, they have been released as part of the previous FOI request. However, the part that I consider to be deliberative is an opinion on options put forward by the department for the Minister's consideration and this still formed a part of the deliberative processes involved in the functions of the department and the Minister.

On this basis, I am satisfied that the abovementioned document contains deliberative matter for the purposes of section 47C(1) of the FOI Act. I am further satisfied that parts of the document are conditionally exempt under section 47C(1) of the FOI Act.

#### *Public interest considerations*

Section 11A(5) of the FOI Act provides:

*'The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.'*

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act; and
- inform debate on a matter of public importance, being the implementation of the live sheep phase out commitment.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice the attainment of outcomes in relation to the implementation of the phasing out of live sheep exports.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the document would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.



As identified in the Schedule, I have deleted the exempt information in the document and released the remaining material in accordance with section 22(1) of the FOI Act.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to document 1.

Section 47F of the FOI Act relevantly provides:

- '(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister 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.'

*Personal Information*

The term 'personal information' is defined as follows:

'...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

I find that document 1 contains personal information of other people. This includes their names and titles.

*Whether disclosure is 'unreasonable'*

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the Guidelines provides:

'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.'

I am satisfied that the disclosure of the third party personal information would be unreasonable for the following reasons:

- it relates to aspects of individuals' personal affairs;
- you do not have the consent from these individuals for the release of their personal information;
- the information is private and not available in full or in part from publicly-accessible sources; and
- the identity of the individuals concerned is readily apparent or could be easily ascertained.

On this basis, I have decided that the personal information included in document 1 referred to in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

#### *Public interest considerations*

Section 11A(5) of the FOI Act provides:

'The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act; and
- inform debate on a matter of public importance, being the implementation of the live sheep phase out commitment.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the document would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

As identified in the Schedule, I have deleted the exempt information in the document and released the remaining material in accordance with section 22(1) of the FOI Act.

#### **Summary of my decision**

In conclusion, I have decided to:

- grant you part access to one document.

I have decided that:



- document 1 is conditionally exempt, in part, under sections 47C(1) and 47F(1) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).

