



'SF'

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

Dear SF

### **Freedom of Information request – Internal Review Decision**

I refer to your request received by the Department of Agriculture, Fisheries and Forestry (**department**) on 10 November 2023 for internal review of the department's decision under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) dated 31 October 2023 (**Primary Decision**).

#### **My decision**

I have decided to affirm the Primary Decision.

I have also decided to apply an additional exemption to parts of the document.

The reasons for my decision are set out in **Attachment A**.

#### **You can ask for a review of my decision**

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

Laura Timmins  
Assistant Secretary  
Agricultural Trade and Market Access Branch  
Trade and International Division

// December 2023

## REASONS FOR DECISION

### What you requested

On 3 October 2023, you made the following request for access under the FOI Act:

'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.'

### Primary decision

On 31 October 2023, the Primary Decision maker determined that there was one document (totalling 7 pages) that related to your request. The Primary Decision maker decided to:

- grant you **part access** to one document (document 1) with some of the content removed, as it contained personal information about other people and deliberative matter, the disclosure of which would be contrary to the public interest.

### Request for Internal Review

On 10 November 2023, you applied for internal review of the Primary Decision and requested review of the application of section 47C(1) to certain information in the Primary Decision.

### What I took into account

In reaching my decision, I took into account:

- your original request dated 3 October 2023;
- other correspondence from you on 26 October 2023;
- the Primary Decision dated 31 October 2023;
- your request for internal review dated 10 November 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 to affirm the Primary Decision as I am satisfied that certain parts of the document that you requested are exempt under the FOI Act.

I have also decided that an additional exemption under section 33(a)(iii) of the FOI Act that was not included in the Primary Decision, also applies to parts of the document.

My findings of fact and reasons for deciding that exemptions apply to the document are discussed below.

#### Section 47F(1) of the FOI Act – unreasonable disclosure of personal information

I note that you have accepted the exemption applied to parts of document 1 under section 47F(1) and have not requested a review of the application of this exemption to the document. As such, I have not considered this exemption as part of this internal review.

#### Section 47C(1) of the FOI Act – Deliberative processes

I have decided to affirm the Primary Decision as I am also satisfied the conditional exemption in section 47C(1) applies, relevantly, to parts of document 1.

Section 47C of the FOI Act relevantly provides:

'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 an agency or a Minister or 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.

As outlined in the Primary Decision, the document is an overview of the live sheep phaseout project, presented at a meeting with the Minister. I agree with the Primary Decision maker that the document contains information relating to proposed options and 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.

In your request for internal review, you have submitted the following:

'...the title of page 5 claims a s 47C(1) exemption. I find it difficult to accept that the title of a page contains deliberate material. Even accepting the reasoning of the previous decision maker, information on 'what' the minister was briefed on is not deliberative material. All

titles and headings should be released. These are not "opinion, advice or recommendation obtained" ...'

I have considered your views above, however I do not accept this reasoning, as the FOI Act or Guidelines do not indicate that titles and headings are excluded from being categorised as deliberative material in all circumstances. As outlined above, deliberative matter is any 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 the department or the Minister. In these circumstances, I am satisfied that the title and headings on page 5 relate to opinions on the subject matter demonstrated by way of short headings and deliberation on possible outcomes and proposed responses that took place in the course of the deliberative processes between the department and the Minister.

In your request for internal review, you have also submitted the following:

'Page 5 also has 4 boxes under "What we are hearing". Assumedly, there is a 5th box there with a title and content. Assuming the content is titled correctly, the missing "What we are hearing" box would also be classed as factual information. 47C(b) specifically excludes factual information as being deliberative.'

While the column on page 5 is titled 'what we are hearing', I consider that the content included in the particular box which has been redacted is the opinions, or relates to the opinions, of other parties, which have been obtained and recorded, in the course of, or for the purposes of, the deliberative processes involved in the functions of the department and the Minister.

On this basis, I agree with the Primary Decision maker that parts of the abovementioned document contain deliberative matter for the purposes of section 47C(1) of the FOI Act, and I am further satisfied that the document is conditionally exempt under section 47C(1) of the FOI Act.

#### *Public interest considerations*

In your request for internal review, you have submitted the following:

'..Even if somehow they are, it is in the public interest to know the matters the department is briefing the minister on (even if an exemption is claimed on the substance of that advice or option). Knowing what the department is briefing the minister could not prejudice any government process.'

As outlined in the Primary Decision, I am satisfied that the relevant factors in favour of disclosure are 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 by sea commitment.

I note that the department provides briefs to the Minister on many different subject matters that fall within the portfolio responsibilities of the Minister as part of usual processes or as requested by the Minister. The public interest element of this exemption has not, as your submission suggests, been satisfied due to the mere fact that the Minister was briefed on this particular document. Rather, as noted in the Primary Decision, the factors weighing against disclosure indicating that access would be contrary to the public interest include 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 by sea.

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.

In light of the above, and further to the reasoning in the Primary Decision, I am satisfied that parts of the document are exempt in accordance with section 47C(1) of the FOI Act.

### Section 33 of the FOI Act – documents affecting international relations

In addition to the Primary Decision, I have applied the exemption in section 33(a)(iii) to parts of document 1.

Section 33 of the FOI Act provides that:

‘A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

...

(iii) the international relations of the Commonwealth’

I have found that parts of the document subject to internal review are exempt under section 33(a)(iii) of the FOI Act. The material which I have refused access to is information in relation to the Commonwealth’s international relations with other countries.

Paragraph 5.36 of the Guidelines relevantly provides:

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

The material that is partially exempt in the document relates to relations between the Commonwealth and other countries. I am satisfied that there is a reasonable expectation that the release of certain material in the document would disclose information about bilateral relationships with these countries or potential trade negotiations.

I am also satisfied that there is a reasonable expectation of damage to the international relations of the Commonwealth. If this information were made publicly available, it would have the capacity to undermine the department’s relation with other countries. Moreover, it would potentially prejudice the flow of confidential information between the Commonwealth and other countries.

For the reasons set out above, I am satisfied that the material is exempt under section 33 of the FOI Act.

### **Conclusion**

In conclusion, I have decided to:

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

- apply an additional exemption, section 33(a)(iii), that was not part of the Primary Decision, to parts of the document.