



Australian Government
Attorney-General's Department
Office of Corporate Counsel

File No: 13/8039
Date: 25 June 2013

Mr Peter Timmins
Right to Know

By e-mail only: foi+request-110-5530a80b@righttoknow.org.au

Dear Mr Timmins

Freedom of information request no. 13/052

The purpose of this letter is to give you a decision about access to a document that you requested under the *Freedom of Information Act 1982* (FOI Act).

SUMMARY

I, Frances Brown, Director, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to a document relating to ALRC Report 112, Secrecy Laws and Open Government in Australia on 12 May 2013, specifically:

the most recent summary of the work undertaken and work still remaining to be completed on the ALRC Report 112, Secrecy Laws and Open Government in Australia, tabled in Parliament on 11 March 2010. For example the relevant extract from the brief prepared for Attorney General Dreyfus on taking office, or similar earlier or later document.

On 11 June 2013, this Department contacted you by e-mail and requested a 30 day extension under section 15AA until 11 July 2013. You agreed to a 14 day extension on 13 June 2013. On 18 June 2013, this Department contacted you by e-mail and requested a further 14 day extension under s15AA until 11 July 2013. You declined to agree to that extension.

I have identified one document which falls within the scope of your request, '24 August 2012 Minute to the Secretary – ALRC report on Secrecy Laws and Open Government in Australia' (the 'Document'). I did this by conducting an electronic search of documents, as well as making enquiries of those who may have been able to help locate relevant documents

I have decided to refuse access to that document, which is described in Attachment A. More information, including the reasons for my decision, is set out below.

DECISION AND REASONS FOR DECISION

With regard to the document in question, I have decided:

- **to refuse access in full** to the document: *'24 August 2012 Minute to the Secretary – ALRC report on Secrecy Laws and Open Government in Australia'*.

Material taken into account

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

- the content of the document that falls within the scope of your request
- the FOI Act (specifically section 47C) and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Findings on material questions of fact

My findings on material questions of fact are that the material that you have requested contains deliberative matter.

Public interest conditional exemption – deliberative processes

The document you have requested is conditionally exempt under subsection 47C(1) of the FOI Act, which states that:

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.

The document that I have decided to exempt contains matter ('deliberative matter') in the nature of an opinion, advice and recommendations, prepared by the Department in the course of the deliberative processes involved in the functions of this Department. Therefore, this information meets the definition of 'deliberative matter' for the purposes of the FOI Act. During the course of consultations on this material, strong objections were raised to its release by certain areas of this Department. I am satisfied that the material falls within the conditional exemption for deliberative processes matter.

Access must be given to a document covered by a conditional exemption unless it would be contrary to the public interest. Under section 11B of the FOI Act and Part 6 of the Australian Information Commissioner's Guidelines, I have identified the following factors as relevant in determining whether disclosure would be in the public interest:

factors favouring disclosure:

- *'inform debate on a matter of public importance'*
- *'inform the community of the Government's operations'*

- 'enhance the scrutiny of government decision making'
- 'reveal the reason for a government decision and any background or contextual information that informed the decision' and

other factors against disclosure include:

- *whether it is contrary to the public interest to disclose draft material that has not gone before the relevant minister (or ministers), does not reflect the Government's settled policy (or even a settled view within an agency), and would have cross-portfolio implications if released*
- *whether it is contrary to the public interest to provide the public with a factually incorrect sense of direction that an agency (and the Government) is taking on matters of criminal law, where the material in question uses strong language that would suggest that it is the Government's final, settled position, when in fact it is not*
- *whether an agency could effectively discharge its responsibilities if material prepared for internal consultation and consideration was released prematurely and damaged the relationship between an agency and the Government and*
- *whether it is contrary to the public interest to disclose material that would inhibit policy officers from considering (and documenting) a full range of draft responses to ALRC recommendations.*

In accordance with subsection 11B(4) of the FOI Act, I have ensured that no irrelevant factors have been considered in reaching this decision. In my view, the factors against disclosure of the material (for instance, *release of the material could damage the relationship between an agency and the Government*) outweigh any factors in favour of disclosure (such as *'informing the community of the Government's operations'*). Accordingly, I am satisfied that the document is conditionally exempt under subsection 47C(1) of the FOI Act and that disclosure would be contrary to the public interest.

Your review rights

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

Under section 54 of the FOI Act, you may apply in writing to the Freedom of Information and Privacy Section of the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

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 of the date of this letter, and be lodged in one of the following ways:

Online: <https://forms.australia.gov.au/forms/oaic/foi-review/>

E-mail: enquiries@oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

In person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to http://www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Questions about this decision

If you wish to discuss this decision, please contact the action officer, Logan Tudor, on (02) 6141 3715 or e-mail foi@ag.gov.au.

Yours sincerely,



Frances Brown
Director
FOI & Privacy Section
Attorney-General's Department
E-mail: foi@ag.gov.au

Attachments

- A. Schedule of documents



Australian Government

Attorney-General's Department

Office of Corporate Counsel

Attachment A – Freedom of information request no. 13/052

Document	Date	Description	Decision on access	Exemptions
<i>'24 August 2012 Minute to the Secretary – ALRC report on Secrecy Laws and Open Government in Australia'</i>	August 2012	Minute to the Secretary, ALRC report on Secrecy Laws and Open Government in Australia, produced by the Attorney-General's Department in August 2012 for the Secretary, Mr Roger Wilkins	Access refused in full	47C(1) Public interest conditional exemption – deliberative processes