



19 April 2024
FOI ref: 3546

Mr David Smith

By email: foi+request-11139-xxxxxxx@xxxxxxxxxxx.xxx.xx

Dear Mr Smith

FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 19 February 2024 for access, under the *Freedom of Information Act 1982 (FOI Act)*, to the following:

[A]ny reports relating to internal or external reviews:

- *Held by the Treasury or the Data Standards Body; and*
- *Relate to the operation and/or effectiveness of the Consumer Data Right, from 1 October 2022 – 15 February 2024.*

I am an authorised decision maker under section 23 of the FOI Act.

Decision

The Treasury has identified one document in the scope of your request. I have decided to refuse access to the document in full.

Further information regarding my decision is set out below.

Material Considered.

The material to which I have had regard in making this decision includes: the scope of the FOI request; the content of the document subject to your request; the relevant provisions in the FOI Act; advice from subject matter experts within the Treasury; consultation with a relevant third party; and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Reasons for decision

Section 47E(d) – Operations of agencies

Section 47E(d) of the FOI Act provides 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 operations of an agency.

A key function of the Treasury is to develop robust economic policy for Government by anticipating and analysing policy issues with a whole-of-economy perspective. To carry out this function, the Treasury undertakes consultation with relevant Industry stakeholders.

The document subject to your request was commissioned for internal Treasury purposes and contains commercially sensitive information provided by industry stakeholders. Industry stakeholders were advised ahead of consultation with the author that any information they provide that is commercially sensitive would be kept confidential. Further, in preparing the document, the author amalgamated commercially sensitive information provided in the consultations which raises practical difficulties associated with undertaking consultation with those stakeholders.

Accordingly, I consider that if the document were to be disclosed under the FOI Act, industry stakeholders may be unwilling to provide their frank and candid views to the Treasury in the future for fear of those views being disclosed under the FOI Act. I consider this, in turn, could reasonably be expected to have a substantial adverse effect on the Treasury's ability to carry out its function of developing robust economic policy for Government.

I therefore find that the document is conditionally exempt from disclosure under section 47E(d) of the FOI Act. My consideration of the public interest is set out below.

Public Interest

Section 11A(5) of the FOI Act provides that conditionally exempt material must be released unless its disclosure would, on balance, be contrary to the public interest. Section 11B(3) sets out public interest factors favouring release, and section 11B(4) sets out factors that must not be taken into account. The FOI Guidelines set out factors in favour of, and against, releasing conditionally exempt material.

In favour of release, I have considered that disclosure of the document would further the objects of the FOI Act and inform debate on a topic of interest to a substantial section of the public.

Against release, I have considered:

- the public interest in maintaining the Treasury's ability to obtain the frank and candid views of industry stakeholders when analysing policy issues with a whole-of-government perspective; and
- the public interest in maintaining the Treasury's ability to develop robust economic policy for Government.

On this basis, I consider there are overriding public interest factors against disclosure of the relevant material. I have therefore decided the report is exempt under section 47E(d) of the FOI Act.

Rights of Review

A statement setting out your rights of review in this matter is attached.

Yours sincerely

James Kelly

James Kelly
Division Head
Market Conduct and Digital Division

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to FOI@Treasury.gov.au.

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.