



D Browns

Via email: foi+request-11223-7099ecba@righttoknow.org.au

Dear D Browns

Decision on your Freedom of Information request

I refer to your request, dated 11 March 2024 and received by the Department of Climate Change, Energy, the Environment and Water (**department**) on the same date for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

'Under the FOI act I am requesting copies of correspondence, including emails, between the departments Zero Industries division and the Seadragon wind farm or Star of the south windfarm, which discuss or comment on the current environmental assessments for these projects. For the purpose on this request the request is limited to correspondence during the months of December to 2023, January 2024, and February 2024.'

My decision

The department holds 2 documents (totalling 7 pages) that relate to your request.

I have decided to:

- grant you **part access** to 1 document (document 2) with some of the content removed; and
- **refuse access** to 1 document (document 1).

I have decided that certain parts of documents that you have requested are exempt under the FOI Act as they would disclose:

- personal information of third parties, the disclosure of which would be contrary to the public interest (section 47F conditional exemption); and
- business information, the disclosure of which:
 - would, or could reasonably be expected to, unreasonably affect a person adversely in respect of its lawful business, commercial or financial affairs, and be contrary to the public interest (section 47G(1)(a)); and
 - could reasonably be expected to prejudice the future supply of information to the Commonwealth, or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency, and be contrary to the public interest (section 47G(1)(b)).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision.

Charges

On 26 March 2024, the department made a preliminary estimate of the charges applicable to your request in the amount of \$102.06. On 5 April 2024, the department received payment in full.

I have assessed the charge under Regulation 10 of the *Freedom of Information (Charges) Regulations 2019* and the cost of processing your request was lower than the amount estimated. Accordingly, I have re-calculated the applicable charge as \$68.08. You will be provided with details on how to obtain a refund of \$33.98.

How we will send your documents to you

The documents are 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@dcceew.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 or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi@dcceew.gov.au.

Yours sincerely



Paul Murphy
Branch Head

Offshore Renewable Branch
Net Zero Industries Division
17/05/2023



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Attachment A

LIST OF DOCUMENTS FOR RELEASE

LEX-76544

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-6	11/01/2024	Letter from the department to Star of the South Wind Farm Pty Ltd	Exempt in full	s 47G(1)(a) s 47G(1)(b) s 47F(1)	Business information exempt under sections 47G(1)(a) and 47G(1)(b) Personal information exempt under s 47F(1)
2.	7	11/01/2024	Email correspondence between Star of the South Wind Farm Pty Ltd and the department	Release in part	s 47F(1)	Personal information exempt under s 47F(1) Staff details deleted under s 22(1)(a)(ii) (out of scope)

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REASONS FOR DECISION

What you requested

'Under the FOI act I am requesting copies of correspondence, including emails, between the departments Zero Industries division and the Seadragon wind farm or Star of the south windfarm, which discuss or comment on the current environmental assessments for these projects. For the purpose on this request the request is limited to correspondence during the months of December to 2023, January 2024, and February 2024.'

Request consultation process

On 13 March 2024 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. Staff details have therefore been deleted in accordance with section 22(1) of the FOI Act.

What I took into account

In reaching my decision, I took into account:

- your original request dated 11 March 2024;
- the documents that fall within the scope of your request;
- consultation with third parties about documents which contain information concerning them;
- information about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- 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 documents and parts of documents that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to those documents are discussed below.

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

I have applied the conditional exemption in section 47F(1) to documents 1 and 2.

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 documents 1 and 2 contain personal information of identifiable people. This includes their names and contact details.

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 parties' personal information would be unreasonable for the following reasons:

- we 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;
- the identities of the individuals concerned are readily apparent or could be easily ascertained;
- the individuals concerned have opposed the release of the information on the grounds that it is of such a nature that disclosure may cause harm. I am satisfied that the individuals' contentions are reasonable in the circumstances.

On this basis, I have decided that the personal information included in documents 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.

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 the documents 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.

Section 47G of the FOI Act – Business information

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

Section 47G of the FOI Act provides:

'(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of

the Commonwealth or of a Territory or the administration of matters administered by an agency.’

Document 1 contains information relating to the proposed offshore wind farm in Gippsland, Victoria, operated by Star of the South Pty Ltd. It contains information relating to the assessment and approval processes for the project, as well as information about the project’s methodology and design. This information was communicated in confidence between the department and Star of the South Pty Ltd. On this basis, I am satisfied that the document contains information concerning Star of the South Pty Ltd’s business, commercial or financial affairs.

Following consultations with Star of the South Pty Ltd, I am further satisfied that disclosure of this document would reveal commercially sensitive information concerning Star of the South Pty Ltd’s business activities, and would have an adverse effect on Star of the South Pty Ltd’s business affairs as parties in similar industries could gain a competitive advantage against them. As such, I am satisfied that disclosure of the document would have an unreasonably adverse effect on Star of the South Pty Ltd’s business affairs.

Additionally, document 1 contains commercially sensitive information which was provided to the department on a confidential basis. Given that the FOI Act does not control or restrict use or dissemination of information disclosed, I am satisfied that disclosure of this information could reasonably be expected to prejudice the future supply of information to the department for the purposes of administering the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), as disclosure of the information could make third parties more reluctant to provide information to the department in the future.

On this basis, I am satisfied that the documents as outlined in the document schedule above are conditionally exempt under section 47G 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 operation of the Star of the South wind farm.

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:

- adversely affect Star of the South Pty Ltd’s lawful business; and
- prejudice the future supply of information to the department for the purpose of the department’s administration of the EPBC Act.

Based on the above factors, I have decided that in this instance, the disclosure of the documents 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.

Summary of my decision

In conclusion, I have decided to:

- grant you part access to 1 document; and
- refuse access to 1 document.

I have decided that document 1 is conditionally exempt, in full, under sections 47F(1), 47G(1)(a) and 47G(1)(b) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5). Additionally, I have decided that document 2 is conditionally exempt in part, under section 47F(1) Of the FOI Act, and that disclosure of parts of this document would be contrary to the public interest for the purposes of section 11A(5).