



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Ref: LEX-76741

Oliver Smith

Via email: foi+request-11283-9520b071@righttoknow.org.au

Dear Oliver Smith

Decision on your Freedom of Information request

I refer to your request, dated 28 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 seek all documents prepared between 1 June, 2023 and 31 December, 2023, by the Migratory Species Section of the International Environment Reef and Oceans Division, and the Biodiversity Conservation Division, that were provided to the Nature Positive Regulation Division or the Offshore Energy portfolio in relation to the PORTLAND DECLARATION AREA AND SOUTHERN OCEAN DECLARATION AREA.'

My decision

The department holds two documents (totalling 14 pages) that relate to your request.

I have decided to grant you **part access** to two documents with some of the content removed.

Certain parts of the documents that you have requested are exempt under the FOI Act as they contain deliberative matter relating to advice, recommendations and consultations that have taken place for the purposes of the deliberative processes involved in the functions of the department, the disclosure of which would be contrary to the public interest (section 47C conditional exemption).

On 4 April 2024, the department acknowledged your request and advised you that we would not include personal details about our junior staff. You did not contact the department again about this. Any junior staff details have therefore been deleted in accordance with section 22(1) of the FOI Act. Please note that information not relevant to your request has also been deleted in accordance with section 22(1).

On this occasion, I have decided to not impose a charge for processing this FOI request.

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

How we will send your documents to you

The documents are **attached**.

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dceew.gov.au
ABN 63 573 932 849

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



Allison Kenna
Principal Legal Officer
Information Law Team
Legal Division

26 April 2024



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Attachment A

LIST OF DOCUMENTS FOR RELEASE

LEX-76741

Doc No.	Date	Description	Decision	Exemption	Comments
1.	23 November 2023	Email re Southern Offshore Declaration Area	Release in part	s 47C	Deliberative information s 22(1)(a) - Junior staff details deleted (out of scope)
2.		Advice: Southern Ocean Region Preliminary Declaration Area for Offshore Renewables Attachment to document 1	Release in part	S 47C	Deliberative information

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REASONS FOR DECISION

What you requested

'Under the FOI Act, I seek all documents prepared between 1 June, 2023 and 31 December, 2023, by the Migratory Species Section of the International Environment Reef and Oceans Division, and the Biodiversity Conservation Division, that were provided to the Nature Positive Regulation Division or the Offshore Energy portfolio in relation to the PORTLAND DECLARATION AREA AND SOUTHERN OCEAN DECLARATION AREA.'

What I took into account

In reaching my decision, I took into account:

- your original request dated 28 March 2024;
- the documents that fall within the scope of your request;
- 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 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 47C of the FOI Act – Deliberative processes

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

Section 47C of the FOI Act 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:

- (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.

Parts of the document contain 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.

I am satisfied that the relevant material is not 'operational information' or 'purely factual material', which are excluded from the definition of 'deliberative matter' under section 47C(2) of the FOI Act.

On this basis, I am satisfied that the above mentioned document contains deliberative matter for the purposes of section 47C(1) of the FOI Act. I am further satisfied that the document is 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;
- inform debate on a matter of public importance, being the Government's decision-making process in relation to the declaration of an area in the Southern Ocean off Victoria for offshore renewable energy.

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 undermine the department's ability to administer the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**). In my view, disclosure of the deliberative matter in the document would have this effect, and therefore prejudice the attainment of the objects 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.

Conclusion

In summary, I am satisfied that the parts of the document, as set out in the Schedule, are conditionally exempt under section 47C(1) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the documents in full to you.

As identified in the Schedule, I have deleted the exempt information in the document/s and released the remaining material in accordance with section 22(1) of the FOI Act. Information not relevant to your request, including junior staff details, has also been deleted under section 22(1) of the FOI Act.