



Our ref: 2023/022

16 May 2024

Alex Pentland

By email: [foi+request-11340-73dceca6@righttoknow.org.au](mailto:foi+request-11340-73dceca6@righttoknow.org.au)

Dear Alex,

## **FREEDOM OF INFORMATION REQUEST: FOI 2023/022 – NOTICE OF DECISION**

1. I refer to your request for access to documents made under the *Freedom of Information Act 1982 (FOI Act)*, received by the Australian Pesticides and Veterinary Medicines Authority (APVMA), on 18 April 2024.

### **Scope of your request**

2. In your request, you sought access to the following:

*“the Style Guides/Brand Guides/Writing Guides currently used for the Australian Pesticides and Veterinary Medicines Authority.”*

### **Background**

3. On 30 April 2024 you were advised that in accordance with section 15(5)(b) of the FOI Act, the decision on your request would be due on 18 May 2024, however due to this date being a Saturday, the due date for your request is 20 May 2024.

### **Information falling outside the scope of the request**

4. The right of access under the FOI Act is limited to a document in the possession of an Agency. In addition to the Documents identified as falling within the scope of your request, the APVMA uses the Australian Government Style Manual. This document has not been considered within the scope of your request. The FOI Act defines ‘document’ in section 4 and excludes from the definition ‘material maintained for reference purposes that is otherwise publicly available’. This document is publicly available at <https://www.stylemanual.gov.au/> .

### **Decision**

5. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

6. The APVMA has conducted searches of its electronic case management, records management and email communication systems for any documents it holds that are within scope of your request.
7. I have identified 2 documents within scope of your request (**the Documents**).
8. In making my decision regarding access to the Documents, I have taken the following material into account:
  - a. the terms of the request;
  - b. the content of the document that fell within the scope of your request;
  - c. information that is publicly available;
  - d. relevant provisions in the FOI Act and legislation under which the APVMA operates; and
  - e. the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).
9. I have decided to:
  - a. grant partial access to the Documents falling within the scope of your request on the grounds that the Documents contain:
    - i. information considered conditionally exempt under section s 47E(d) of the FOI Act; and
    - ii. information irrelevant to this request.
10. The reasons for my decision are set out at **Attachment A**.
11. A schedule setting out my decision in relation to the relevant document is at **Attachment B**.
12. Information about your review rights is at **Attachment C**.

**Contact officer**

13. To discuss this notice, please contact FOI Officer, Office of the Executive General Counsel, [FOI@apvma.gov.au](mailto:FOI@apvma.gov.au).

Yours sincerely

Prue Oxford  
Director, Records & Knowledge Management  
Office of the Executive General Counsel

## **ATTACHMENT A**

### **Reasons for decision**

#### ***Section 22 of the FOI Act – Exempt or irrelevant matters deleted***

14. An agency or minister may refuse access to a document on the ground that it is exempt and withhold information that would reasonably be regarded as irrelevant to the request. If so, the agency or minister must consider whether it would be reasonably practicable to prepare an edited copy of the document for release to the applicant, that is, a copy with relevant deletions.
15. As explained above, the Documents contain information which I have decided to redact under section 47E(d) of the FOI Act. The edited copy of the Documents indicates where this has been redacted under section 47E(d) as conditionally exempt.
16. Where information that falls outside the scope of your request is contained in the Documents, the edited copy of the Documents indicates this has been redacted under section 22, as irrelevant to the request.
17. In accordance with section 22 of the FOI Act, I have prepared the document for release by removing exempt and irrelevant information.

#### **Public interest conditional exemptions**

18. An agency or minister can refuse access to a document or part of a document that is conditionally exempt from disclosure under Division 3 of Part IV of the FOI Act. Division 3 of the FOI Act includes a conditional exemption for the certain operations of agencies (section 47E).
19. Where a document is assessed as conditionally exempt, it is only exempt from disclosure if disclosure would, on balance, be contrary to the public interest. The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.
20. A single public interest test applies to each of the conditional exemptions. This public interest test includes certain factors that must be taken into account where relevant, and other factors which must not be taken into account. My reasoning in regard to the public interest is set out below under the header 'Application of the public interest test – subsection 11A(5)'.
21. Additional information about each of the conditional exemptions can be obtained from the Guidelines available at Part 6 [Conditional exemptions].

**Subsection 47E(d) of the FOI Act- certain operations of agencies- conditional exemption**

22. Subsection 47E(d) of the FOI Act provides that a document is exempt if its disclosure would or could reasonably be expected to have ‘a substantial adverse effect on the proper and efficient conduct of the operations of an agency’.
23. The Guidelines make it clear that ‘[f]or the grounds in ss 47E(a)-(d) to apply, the predicted effect needs to be reasonably expected to occur...There must be more than merely an assumption or allegation that damage may occur if the document were to be released’ (paragraph 6.101).
24. Cases such as ‘ZA’ and *Department of Veterans Affairs (Freedom of information) [2021] AICmr 83 (8 December 2021)* and ‘AHX’ and *Department of Employment and Workplace Relations (Freedom of Information) [2024] AICmr 39 (22 February 2024)* discuss what is required for information to fall within this exemption. They make it clear that the predicted effect of the disclosure of the documents must be more than an inconvenience but must amount to a substantial adverse effect on the agency’s operations.
25. The document identified at ‘Doc no.’ 1 at **Attachment B** describes the branding and visual identity of the APVMA and the guidance must be followed when commissioning, designing or delivering any form of communication. The Document identified at ‘Doc no.’ 2 at **Attachment B** provides exact details of the colour palette used by the APVMA.
26. The APVMA uses this guidance when communicating with external stakeholders. It is important that the APVMA uses a consistent approach when communicating with such stakeholders as it helps to provide certainty for members of the public that they are using or engaging with an Australian Government service.
27. The information could be reasonably expected to assist those who may wish to replicate APVMA correspondence, thus providing legitimacy to fraudulently drafted documents. As the APVMA is a regulator of agricultural and veterinary chemical products it has a significant role in managing the risks of pests and diseases for the Australian community and in protecting Australia’s trade and the health and safety of people, animals, and the environment. The APVMA has a requirement and responsibility to be vigilant against potential fraud.
28. For this reason, I have decided to exempt information under subsection 47E(d) of the FOI Act on the basis that there is a significant and genuine risk to the public if the APVMA releases this information.
29. Document 1 also contains a group inbox address and I consider that releasing this information to you would negatively affect the conduct of the operations of the APVMA. This is because the APVMA’s purpose is to provide regulatory services. While it is a small agency, it has many points of contact designed to facilitate its purpose. The APVMA has established channels of communication which have been put in place to ensure the effective management of the significant volume of communication received. Such channels include dedicated and externally published positional mailboxes of different business areas within the APVMA. These have

been established to ensure correspondence is directed to the correct area and actioned accordingly.

30. If internal positional mailbox details were to be made publicly available, correspondence directed to these mailboxes could be mishandled, lost, duplicated or double-handled on account of it not being directed to the most appropriate teams through the publicly available communication channels. Noting the APVMA's interactions with external people are a significant part of the agency's business, diverting people from correct channels cannot be appropriately categorised as insubstantial or nominal.

### ***Application of the public interest test – subsection 11A(5)***

31. Subsection 11A(5) of the FOI Act provides that an agency '*must give the person access to a document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest*'.

32. The Guidelines at paragraph 6.5 explain that the public interest test is considered to be:

- *something that is of serious concern or benefit to the public, not merely of individual interest*
- *not something of interest to the public, but in the interest of the public*
- *not a static concept, where it lies in a particular matter will often depend on a balancing of interests*
- *necessarily broad and non-specific, and*
- *related to matters of common concern or relevance to all members of the public, or a substantial section of the public.*

33. The Guidelines provide at 6.27:

*To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts of the matter at the time the decision is made.*

34. Section 11B(3) of the FOI Act sets out a non-exhaustive list of public interest factors favouring disclosure of documents. These include:

- a) *promoting the objects of the Act*
- b) *informing debate on a matter of public importance*
- c) *promoting effective oversight of public expenditure*

35. The FOI Act does not list any specific factors weighing against disclosure. However, I have considered the non-exhaustive list of factors against disclosure in the Guidelines, in addition to the specific circumstances relevant to the conditionally exempt material.

36. In deciding whether to disclose conditionally exempt information, I have considered the factors favouring access, set out in subsection 11B(3) of the FOI Act and have not taken into account irrelevant factors, listed under subsection 11B(4) of the FOI Act.

37. I consider the release of the conditionally exempt information could, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the APVMA.
38. While there is an interest in open government and increased scrutiny of government activities, the information relating to specific AVPMA styles has little meaning in providing clarity to these issues. I consider that the need to protect the integrity of APVMA correspondence to outweigh the public interest in release.
39. In balancing these factors, I am satisfied that the release of specific styles would be contrary to the public interest and as such have decided to not release this information. In accordance with section 22 of the FOI Act, I have removed the material that is exempt under section 47E(d) of the FOI Act.

### **Release of documents**

40. The Documents with information that is exempt under section 47E(d) of the FOI Act deleted, in accordance with s 22, are attached.

### **Publication of information in accessed documents**

41. Section 11C of the FOI Act requires that generally if the APVMA gives a person access to a document it must publish the information to the members of the public generally. However, the section provides that this does not apply in the case of any of the following:
- a) *personal information about any person, if it would be unreasonable to publish the information;*
  - b) *information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;*
  - c) *other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;*
  - d) *any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).*

42. Given the content of the information contained in the Documents, as redacted, would not be considered unreasonable to publish I am of the view that the documents falling within the scope of your request should be made available on the APVMA's FOI Disclosure Log.

### **Review rights**

43. The FOI Act provides for rights of review of decisions. A copy of the fact sheet "Freedom of Information – Your Review Rights" is at **Attachment C**.



**ATTACHMENT B**

**FOI 2023/022 – Document schedule**

<b>Doc</b>	<b>Date</b>	<b>Author</b>	<b># of pages</b>	<b>Document description</b>	<b>Decision on release</b>	<b>Section(s) of the Act</b>
1	2021	APVMA	27	APVMA Visual Style Guide	Partial access	47E(d)
2	2023	APVMA	1	APVMA Corporate Colour Palette	Partial access	47E(d)



## **ATTACHMENT C**

### **Freedom of Information – Your Review Rights**

#### **Freedom of Information Your Review Rights**

If you disagree with the decision made by the Australian Pesticides and Veterinary Medicines Authority (APVMA) or the Minister under the Freedom of Information Act 1982 (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if your application to have your personal information amended was not accepted or your comments in response to formal consultation were not accepted.

There are two ways you can ask for review of a decision: internal review by the APVMA, or external review by the Australian Information Commissioner.

#### **Internal review**

If the APVMA makes an FOI decision that you disagree with, you can ask the APVMA to review its decision. There is NO charge for internal review.

You must apply within 30 days of being notified of the decision, unless you have sought an extension from the APVMA. The APVMA must make a review decision within 30 days. Where the APVMA has not met its review obligation, you may then approach the Information Commissioner.

Internal review is not available if the Minister or the principal officer of the agency made the decision personally.

#### **How to apply for internal review**

You must apply in writing and should include a copy of the notice of the decision provided and the points to which you are objecting and why. You can lodge your application in one of the following ways:

Email: [FOI@APVMA.gov.au](mailto:FOI@APVMA.gov.au)

Post: Freedom of Information, APVMA, GPO Box 3262, Sydney NSW, 2001, Australia

Phone: 02 6770 2300

#### **External Review**

*Do I have to go through the APVMA's internal review process first?*

No. You may apply directly to the Information Commissioner. However, going through the APVMA internal review process gives the APVMA the opportunity to reconsider its initial decision and your concerns will most likely be addressed more quickly, without undergoing an external review process.

*When can I go to the Administrative Appeals Tribunal (AAT)?*

Under the revised FOI Act, you must seek external review through the Information Commissioner prior to applying to the AAT for such a review.





**Australian Government**  
**Australian Pesticides and  
Veterinary Medicines Authority**

### **Making a complaint**

You may make a complaint to the Information Commissioner about actions taken by the APVMA in relation to your application. The complaint needs to be in writing.

#### *Contacting the Information Commissioner*

Further information about the external review process or how to make a complaint to the Information Commissioner is available at the following:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: GPO Box 2999, Canberra ACT 2601

Fax: +61 2 9284 9666

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

### **Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the Information Commissioner, the Ombudsman will consult the Information Commissioner to avoid the same matter being investigated twice.

If the Ombudsman decides not to investigate the complaint, then all relevant documents and information must be transferred to the Information Commissioner. The Information Commissioner can also transfer to the Ombudsman a complaint that could more appropriately be investigated by the Ombudsman. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.