



## Administrative Appeals Tribunal

Our reference: FOI 2015/17

17 December 2015

Mr Paul Miller

By email: [Paul.Miller@fwc.gov.au](mailto:Paul.Miller@fwc.gov.au)

CC: [foi+request-1318-9f2ec873@righttoknow.org.au](mailto:foi+request-1318-9f2ec873@righttoknow.org.au)

Dear Mr Miller

### FOI REQUEST – INTERNAL REVIEW DECISION – ACCESS REFUSED

I refer to your request for an internal review of a decision to refuse access to documents under the *Freedom of Information Act 1982* (the FOI Act), which we received on 17 November 2015.

You requested access to transcripts of hearings in an AAT matter. I have found four documents in our possession that appear to fall within the scope of your request, being transcripts of the proceedings in AAT cases 2012/1055 and 2013/5012, dated 8, 9, 10 and 18 December 2014.

As an officer authorised under the FOI Act to make decisions on access, including on an internal review, I have considered your request, having regard to the FOI Guidelines issued by the Australian Information Commissioner (in particular, paragraphs 5.1 to 5.7 and 5.168 to 5.174 of those guidelines – see: <http://www.oaic.gov.au/freedom-of-information/foi-guidelines/>).

### Decision

I have decided to refuse access to the transcripts because I am satisfied they are exempt documents at the present time: s.11A(4) of the FOI Act.

Section 46 of the FOI Act says a document is exempt if disclosing it would be contrary to a direction or order made by a tribunal with the power to take evidence on oath. The AAT is such a tribunal: s.40 of the *Administrative Appeals Tribunal Act 1975*.

The AAT has made an order under s.35(3) of the AAT Act, which it was satisfied was desirable because of the confidential nature of the matter ('confidentiality order'). The confidentiality order directs that evidence given in this matter can only be disclosed to certain persons, except to the extent the information is contained in the AAT's written Reasons for Decision (item 3 of the order). I attach a copy of the order.

As you are not listed as a person to whom the evidence can be disclosed, the AAT has not yet given a decision, and the contents of the transcripts appear to be in the nature of evidence given before the AAT in this matter, disclosing them to you would be contrary to the AAT's confidentiality order. Accordingly they are exempt documents under s.46 of the FOI Act.

The Information Commissioner's Guidelines suggest that even where a document is exempt, an agency should consider allowing access to it where possible (paragraph 5.7 of the Guidelines). However, I have decided not to give you access to the transcripts, because doing so would breach the confidentiality order, and s.62C of the AAT Act makes it an offence to breach a confidentiality order – punishable by imprisonment, a financial penalty, or both.

In your request for internal review, you suggest that the information contained in the transcripts was formerly available to members of the public or others. Although that may be so, that evidence is now the subject of a confidentiality order. The order does not prevent the parties to the proceeding accessing the documents, so you may be able to get the information you seek from the parties. Once the AAT makes its decision on the case, information about the evidence may also be available in that decision.

### **Questions about this decision**

If you have any questions, please email me at [jason.cabarrus@aat.gov.au](mailto:jason.cabarrus@aat.gov.au) or contact me on the number listed below, or telephone our national enquiry line on 1800 228 333.

### **Review rights and complaints**

If you are dissatisfied with my decision, you may apply to the Information Commissioner for review. 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.business.gov.au/aba/oaic/foi-review-/enquiries@oaic.gov.au>  
email: [enquiries@oaic.gov.au](mailto: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 [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

If you have a complaint about the way we have processed your request for access under the FOI Act you can ask the Commonwealth Ombudsman to investigate. You can find more information on their website [www.ombudsman.gov.au](http://www.ombudsman.gov.au) or contact them by telephone on 1300 362 072 or by email at [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au).

Yours sincerely



Jason Cabarrús  
Authorised FOI Officer (EL2)

Telephone: 02 9276 5237

Attachment:

s.35(3) confidentiality order of 4 November 2015 in case no. 2012/1055, 2013/5012.