



Australian Government

Department of Finance

Reference: FOI 16/40
Contact: FOI Team
Telephone: (02) 6215 1783
e-mail: foi@finance.gov.au

Mr Jackson Gothe-Snape

via email: foi+request-1736-1d83b942@righttoknow.org.au

Dear Mr Gothe-Snape,

Freedom of Information Request – FOI 16/40

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

Can you please provide the topics list for briefs created in preparation for the additional estimates hearing of the Senate Finance and Public Administration Legislation Committee in February 2016.

Decision

In accordance with subsection 23(1) of the FOI Act, I am authorised to make a decision regarding access under the FOI Act.

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

I have decided to exempt one document in full with information exempt under s47C of the FOI Act.

Section 47C – Deliberative process

Section 47C of the FOI Act prescribes that:

(1) 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; or*
- (d) the Government of Norfolk Island.*

The OAIC Guidelines further expand on this provision by stating:

6.56 A document may be conditionally exempt if it includes deliberative matter. Deliberative matter is content that is in the nature of, or relating to either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded*
- a consultation or deliberation that has taken place*
- in the course of, or for the purposes of, a deliberative process of the agency or minister (s 47C(1)).*

6.62 A deliberative process involves the exercise of judgement in developing and making a selection from different options

I am satisfied that the document identified contains matter that is deliberative under section 47C of the FOI Act and is therefore conditionally exempt. The document contains opinion, and recommendations provided to the Finance Secretary, in confidence, in relation to briefing the Minister for Finance of relevant topical and/or sensitive issues concerning the Commonwealth. I have also considered the possibility of a general election being held in June or July of 2016. The department's deliberative view as reflected in the recommendations within the document requested will vary but will likely be used in preparation of an incoming government brief. As such, I consider the documents contain information that is deliberative in nature.

Having formed this view, I am now required to consider whether disclosure of such information would be contrary to the public interest (see 'Public Interest Test' below).

Public Interest Test

I have considered the following factors favouring disclosure as prescribed by subsection 11B(3) of the FOI Act.

- Release of the document would promote the objects of the Act:* I note that disclosure of the document would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible. The release of the document may provide greater opportunity for the Australian public to participate in government processes and to comment on matters and activities undertaken by the Australian Government.
- Release of the document would inform debate on a matter of public importance:* I do not consider that release of the document will assist in informing debate on matters of public importance.
-

The FOI Act does not list any factors weighing against disclosure. Some possible factors to be considered against disclosure are listed in the FOI Guidelines provided by the Information Commissioner under section 93A of the FOI Act. Taking those suggestions and relevant circumstances into consideration, I have considered the following factors against disclosure of the documents:

- *Disclosure could reasonably be expected to prejudice the activities of the Commonwealth agency:* I consider that the release of the document could reasonably be expected to have a substantial adverse effect on the activities of the agency. In particular, the document contains opinion, and recommendations provided to the Finance Secretary in confidence. Disclosure could result in a loss of confidence in Finance's ability to keep confidential information confidential which may impact on Finance's ability to provide similar information in the future. This could undermine Finance's ability to support Government processes in the future.
- *Disclosure would reasonably be expected to affect the 'frankness and candour' of similar future documents of the Agency:* I consider that briefs play an important role in the Australian public service. One of their purposes is to enable and facilitate a flow of information to the Secretary of the agency including harnessing the considered and senior deliberative views of an agency around topical and/or sensitive matters.
- The agency places a strong emphasis on providing helpful briefs with frank and candid advice. On this basis I consider the disclosure of a list of topics of briefs provided to the Secretary of Finance in order to support advice to the Minister for Finance, would reasonably be expected to affect the frankness and candour of written advice prepared by the department if there was an expectation that such material would be publicly released. I place considerable weight on this factor against disclosure of such a list.

I have not given any consideration to the irrelevant factors prescribed in subsection 11B(4) of the FOI Act.

Taking into account all the factors set out above, I have determined that the documents contain information that is conditionally exempt and that the factors against disclosure of the documents outweigh the factors in favour of disclosure.

Charges

No charges were imposed for the processing of this request.

Review and appeal rights

You are entitled to request an internal review or a review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at [Attachment B](#).

Publication

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act and
- information in documents release under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log (www.finance.gov.au) as soon as possible. Finance's policy is to publish the documents within one working day after they are released to you.

Further Information

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CDriessen', with a large, stylized initial 'C'.

Carolyn Driessen
Assistant Secretary
Parliamentary and Coordination Branch
Department of Finance
\\ April 2016

ATTACHMENT A

SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. FOI 16/40

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision
1	N/A	2	Finance	N/A	List of topics to be briefed on.	Exempt under s47C



Australian Government
Department of Finance

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) 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 you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

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 you are objecting and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can

review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant

decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

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

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

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 IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. 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.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal Services Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html

