



11 October 2016

Mr Dan Monceaux

Our Ref: 2016/4528

**BY EMAIL ONLY: [foi+request-2149-d0f39bc4@righttoknow.org.au](mailto:foi+request-2149-d0f39bc4@righttoknow.org.au)**

Dear Mr Monceaux,

**RE: FREEDOM OF INFORMATION ACT 1982 APPLICATION - PORT BONYTHON OIL SPILL**

I refer to your request received by AMSA on 18 August 2016 in which you sought access to documents under the *Freedom of Information Act 1982* (the FOI Act). The request sought documents relating to a marine environment incident that occurred in 1992 at Port Bonython involving the vessel *Era*. Specifically, following a reduction in scope, your request sought the following documents in relation to the incident:

*"All photographs, video/film recordings and reports in AMSA's possession related to the Port Bonython oil spill and response, which occurred in South Australia in August/September of 1992."*

This letter sets out my decision on your request for access. I am an authorised decision-maker under section 23 of the FOI Act.

### **Timeframe for processing your request**

Your request was received by AMSA on 18 August 2016. The statutory period for processing your request is 30 days. The timeframe for processing your request was extended by an additional 30 days to allow for consultation with third parties, and by a further 9 days for a charges notification period. The timeframe for processing your request therefore expires on 22 October 2016.

### **Decision**

I have identified 15 documents relevant to your request, consisting of 92 pages.

I have decided to release 10 documents to you in full, and 5 documents to you in part. The documents released to you in part are partially exempt from disclosure on the basis of s.47F of the FOI Act.

Reasons for my decision are provided at **Attachment B**.



## Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act
- advice from AMSA officers with responsibility for matters relating to the documents to which you sought access,
- submissions by third parties to which the documents relate; and
- advice from AMSA's in-house legal team.

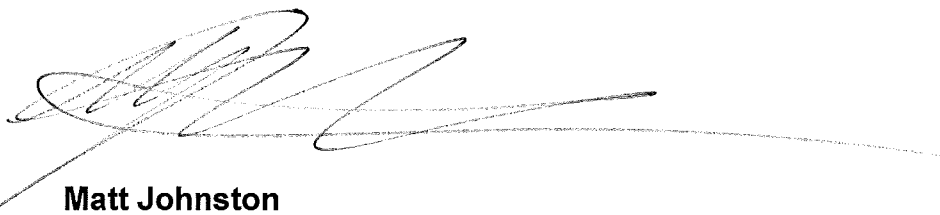
## Review Rights

You are entitled to seek review of this decision. **Attachment C** sets out your rights to apply for review if you are dissatisfied with my decision.

## Contacts

If you have any queries about this notice, please do not hesitate to contact AMSA's FOI team at [FreedomofInformation@amsa.gov.au](mailto:FreedomofInformation@amsa.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matt Johnston', with a long horizontal flourish extending to the right.

**Matt Johnston**  
MANAGER  
MARINE ENVIRONMENT STANDARDS  
MARINE ENVIRONMENT

## **Attachment B - Reasons For Decision**

For the reasons set out below I have partially exempted the requested documents from disclosure under sections 47F of the FOI Act. The documents to which these exemption provisions apply are indicated within the schedule at Attachment A.

### **Section 47F – documents affecting personal privacy**

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.

#### ***Personal information***

Personal information is defined in section 4 of the FOI Act as:

Information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The elements of 'personal information' are:

- i) it relates only to a natural person (not, for example, a company)
- ii) it says something about the individual
- iii) it may be in the form of an opinion, it may be true or untrue, and it may form part of a database
- iv) the individual's identity is known or is reasonably ascertainable using the information in the document.

The identified documents contain information about a private third party, such as the name, qualifications, addresses, opinion, medical history and details of an incident involving that individual. The individual's identity is ascertainable using the information within the documents.

I am satisfied that the documents over which an exemption under section 47F is claimed contains personal information and are noted in the attached schedule.

#### ***Disclosure unreasonable***

If information is personal information, it will be conditionally exempt if disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, section 47F(2) of the FOI Act requires me to take into account:

- i) the extent to which the information is well known
- ii) 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
- iii) the availability of the information from publicly accessible sources
- iv) any other matter I consider relevant.

I am satisfied from the nature of the information that the information in question is not well known or publicly available.

I have taken into account the circumstances in which the information was obtained, and the reasonable expectation of confidentiality that the individual had in the provision of this information to AMSA.

Against those considerations, I have considered the position of the applicant, being a member of the public who is seeking information in the public interest regarding the oil spill incident. This information will presumably assist in researching the events during and subsequent to the incident and any current bearing they may have on proposed oil and gas exploration in the Great Australian Bight.

I do not consider that the disclosure of this information would shed light on the workings of AMSA or enhance accountability or transparency. Further, such disclosure would disproportionately interfere with the privacy of the individual concerned.

Ultimately, in the circumstances, I have concluded that disclosure of the information would be unreasonable.

I have considered section 47F(3) which provides that a document is not conditionally exempt simply because it contains information about you. I have not found any documents to be conditionally exempt on this basis.

I therefore find that the documents are conditionally exempt under section 47F of the FOI Act. Nonetheless as section 47F is a conditional exemption, I must give access to the document unless, in the circumstances, access at this time would on balance be contrary to the public interest.

### ***The public interest***

I have considered the factors favouring access and factors that are irrelevant in subsections 11B(3) and (4). In balancing the public interest in this case, I have considered the following factors for and against disclosure.

### ***Factors in favour of disclosure:***

I have considered whether granting access to the documents would:

- i) promote the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b) of the FOI Act)
- ii) promote effective oversight of public expenditure
- iii) facilitate access to information to members of the public relating to a matter of public safety.

***Factors against disclosure:***

I have considered the following factors against disclosure:

- i) the importance of preserving reasonably held expectations of confidentiality in respect of personal information which was gathered as part of a regulatory activity;
- ii) the potential prejudice to AMSA's ability to receive voluntary assistance from State agencies in its operations in the future;
- iii) the need for those involved in regulatory activities to be able to communicate freely and honestly with AMSA, and
- iv) the potential 'chilling effect' which disclosure of personal information may have on individual's interacting with AMSA and the impact this might reasonably have on the ability of AMSA to perform its regulatory functions in the future.

I acknowledge that there is a public interest in documents of AMSA being made available to the public for the purpose of encouraging public debate, promoting oversight of AMSA's activities and facilitating access to information to members of the public relating to matters of public safety. However, on balance in the circumstances, I consider that these interests do not outweigh the need to protect the personal information of the individual concerned.

Further, I am not satisfied that disclosure of this information in the public interest to the 'world at large' whereby personal information may be disseminated widely without restraint, outweighs the detriment to the individual affected.

Taking into account the above matters, on balance, I consider that disclosure of the information in the documents is contrary to the public interest. Accordingly, I have decided that the documents are partially exempt under section 47F of the FOI Act.

## **Attachment C - review rights**

If you are dissatisfied with this decision, you have certain rights of review available to you.

Firstly, under section 54 of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

The Freedom of Information Officer  
Australian Maritime Safety Authority  
GPO Box 2181  
CANBERRA CITY ACT 2601

Tel: (02) 6279 5689

Fax: (02) 6279 5017

Email: [FreedomOfInformation@amsa.gov.au](mailto:FreedomOfInformation@amsa.gov.au)

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

### **Review by the Australian Information Commissioner**

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commission at:

GPO Box 2999  
Canberra ACT 2601

### **Complaints to Ombudsman or Australian Information Commissioner**

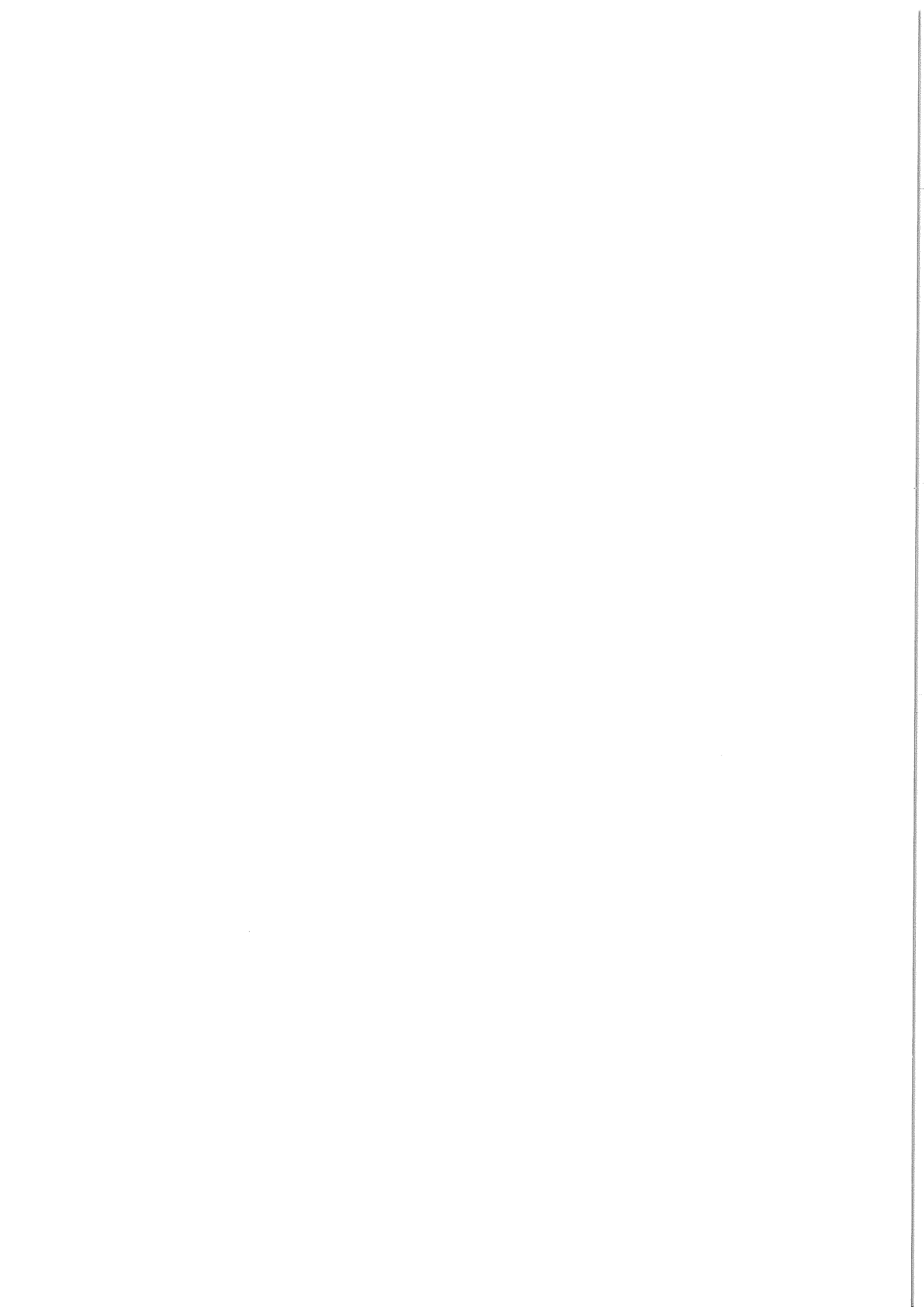
You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by AMSA in relation to your request. The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:  
Phone 1300 362 072 (local call charge)  
Email [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Your enquiries to the Australian Information Commissioner can be directed to:  
Phone 1300 363 992 (local call charge)

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

There is no particular form required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify AMSA as the relevant agency.





**SCHEDULE OF DOCUMENTS SUBJECT TO REQUEST UNDER THE *FREEDOM OF INFORMATION ACT 1982*  
 “REQUEST FOR INFORMATION RELATING TO THE PORT BONYTHON OIL SPILL”**

<b>Folio number</b>	<b>Date</b>	<b>Content</b>	<b>Released in full</b>	<b>Released in part</b>	<b>Exempt in full</b>	<b>Section of FOI Act claimed for deletions or exemptions within document</b>
001-023	N/A	Report on oil spill from tanker “ERA”		✓		s47f
024-025	N/A	Incident summary report	✓			
026-070	Various	Covering letter and preliminary assessment report		✓		s47f
071-076	02 Sept 92	Senior surveyor report and recommendation		✓		s47f
077-082	31 Aug 92	Incident report		✓		s47f
083-092	N/A	Various images	✓			

