



Our ref: DIIS16/6583

GPO Box 9839
Canberra ACT 2601 Australia
Web: www.industry.gov.au
ABN: 74 599 608 295

Mr Dan Monceaux
Right to Know

By email: foi+request-2185-70b72c6c@righttoknow.org.au

Dear Mr Monceaux

Freedom of Information Act 1982 – Notice of Decision

I refer to your correspondence received by the Department of Industry, Innovation and Science (the department) on 30 August 2016 in which you sought access under the *Freedom of Information Act 1982* (the FOI Act). Following a consultation process under section 24AB of the FOI Act, and further correspondence with the department on 29 September 2016, the scope of your request was revised to read as follows:

“Minutes of all meetings of the Uranium Council from 2011 until present (inclusive).”

Background

On 5 October 2016, the department notified you of a charge of \$408.80 required to process your FOI request. You were also notified of the need to undertake third party consultation in relation to your request. Accordingly, you were advised that the department had 60 days from the date of your request within which to notify you of its decision on access to the documents which you requested.

On 7 October 2016, you contended that the postage and photocopy should be waived and the charges should be reduced on the grounds that you are a self-funded researcher.

On 4 November 2016, the department made a decision to waive the postage and photocopy costs but impose a charge of \$392.40.

On 29 November 2016, the department confirmed receipt of your payment of deposit \$102.20.

Decision

I am an authorised decision maker under section 23 of the FOI Act.

Noting that you have paid a deposit, the documents will not be released until the remaining balance of charge is received by the department and the third parties review rights have expired.

I am satisfied that reasonable searches have been undertaken for documents relevant to your request and I am advised that the department has in its possession 7 documents (consisting of 64 folios) that are relevant to your request.

Having considered these documents, I have decided to grant access in part to all 7 documents.

I have decided that certain documents contain material that is exempt under:

- s45 of the FOI Act if disclosure of the material would found an action for breach of confidence;
- s47(1)(b) of the FOI Act if disclosure of the material would disclose any other information having a commercial value that would be expected to be destroyed or diminished if the information were disclosed.
- s47F(1) of the FOI Act if disclosure of the information would be an unreasonable disclosure of the personal information of individuals.
- s47G(1) of the FOI Act because disclosure of the material would be an unreasonable disclosure of an organisation's business information.

The reasons for my decision are set out below, as required by section 26 of the FOI Act.

Reasons for Decision

Evidence/Material on which my findings were based

In reaching my decision, I relied on the following documentary evidence:

- the *Freedom of Information Act 1982*;
- your correspondence of 29 September 2016 setting out the particulars of the revised request;
- the documents identified to be within the scope of the request;
- consultations with departmental officers as to the nature of the documents;
- consultations with relevant third parties; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

Section 22 – Deletion of exempt or irrelevant material

I have decided that certain documents relevant to your request contain material that is irrelevant or exempt. Subsections 22(1) and (2) of the FOI Act provide that:

Scope

(1) This section applies if:

(a) an agency or Minister decides:

- (i) to refuse to give access to an exempt document; or*
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*

(b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:

- (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and*

(c) the edited copy would not disclose any information that would reasonably be regarded as it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:

- (i) the nature and extent of the modification; and*
- (ii) the resources available to modify the document; and*
- (ii) irrelevant to the request; and*

(d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

(2) *The agency or Minister must:*

- (a) *prepare the edited copy as mentioned in paragraph (1)(b); and*
- (b) *give the applicant access to the edited copy.*

I have deleted the exempt material and have decided to release the balance of the documents to you. These deletions are identified in the Schedule of Documents (the Schedule).

Section 45 – Material obtained in confidence

Section 45(1) of the Act provides that:

A document is exempt if its disclosure under the Act would found an action by a person (other than an agency or the Commonwealth) for breach of confidence.

As set out in the Australian Information Commissioner's Guidelines, the following five criteria in relation to the information must be satisfied to found an action for breach of confidence:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- it must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information has or will cause detriment.

I am satisfied that the relevant materials contained in certain documents as identified in the Schedule have the necessary quality of confidentiality, and were provided by the members of the Uranium Council on the basis of a mutual understanding of confidence. Following consultation, the third parties have objected to the release of the material and submitted that its disclosure would cause detriment. Accordingly, I am satisfied that the relevant criteria for founding an action for breach of confidence would be satisfied should the information be released.

I have therefore decided to exempt the relevant material from release under section 45(1) of the FOI Act.

Section 47(1)(b) – Documents disclosing commercially valuable information

Paragraph 47(1)(b) of the FOI Act provides that:

A document is an exempt document if its disclosure would disclose any other information having a commercial value that would expect to be destroyed or diminished if the information were disclosed.

The documents contain confidential information about the Mineral Council of Australia (MCA), views and commercial sensitivities of the MCA's members. It also contains details relevant to the viability and vulnerabilities of the business of the MCA's members. Disclosure of this information could be reasonably be expected to destroy or diminish the value of this information and give significant advantages in negotiations of Australia's uranium trading partners.

I am therefore satisfied that the material is of such a nature that it is exempt under paragraph 47(1)(b) of the FOI Act and will not be released.

As identified in the Schedule I have deleted the exempt material in these documents and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

Section 47F – Personal Information

Subsection 47F(1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The term, 'personal information', is defined in section 4 of the FOI Act to mean:

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.

When determining whether the disclosure of personal information would be unreasonable, subsection 47F(2) of the FOI Act requires me to consider:

- (a) the extent to which the information is well known;
- (b) 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;
- (c) the availability of the information from publicly accessible sources; and
- (d) any other matters that I consider relevant.

I have decided that material contained in certain documents, as identified in the Schedule of Documents, is conditionally exempt under subsection 47F(1) of the FOI Act, on the basis that releasing the information would involve the unreasonable disclosure of personal information about the individuals concerned.

The information which I have determined would be unreasonable to disclose includes the names and contact details of attendees at the meetings. The material also includes information relating to the professional activities of individuals. I do not consider that any public purpose would be achieved through the release of the personal information of these individuals.

Under subsection 11A(5) of the FOI Act, the department must give you access to this conditionally exempt material unless in the circumstances it would be, on balance, contrary to the public interest to do so. Subsection 11A(5) of the FOI Act sets out the following factors favouring access to a document:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person access to his or her own personal information.

I have considered each of the factors favouring access listed above and I have decided that disclosure of the personal information in question would not go towards promoting the objects of the FOI Act or inform debate on a matter of public importance. Disclosure of the personal information would also not promote effective oversight of public expenditure and will not allow you or another person to access his or her own personal information.

I have also taken into account the extent to which disclosure would prejudice individuals' personal privacy and disclose the existence or non-existence of a confidential source of information.

Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the personal information is outweighed by the public interest against disclosure.

I am therefore satisfied that the information in these documents is conditionally exempt under subsection 47F(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 these documents in full to you.

Section 47G – Business Information

Paragraph 47G(1) of the FOI Act provides that:

a document is conditionally exempt if its disclosure under the FOI Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
- *could reasonably be expected to prejudice the future supply of information to the Commonwealth”*

I am satisfied that certain material relevant to the scope of your request contains information about the lawful business, commercial or financial affairs of certain organisations. I am satisfied that the disclosure of this information would unreasonably affect the organisation in respect of its lawful business, commercial or financial affairs.

Under subsection 11A(5) of the FOI Act, the department is required to give access to these folios unless in the circumstances it would be, on balance, contrary to the public interest to do so.

In weighing up the public interest for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account the following factors in favour of disclosure, including the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

I have considered each of the factors favouring access listed above and I have decided that disclosure of the business information in question, while it would promote the objects of the FOI Act and may inform debate on a matter of public importance, it would not promote effective oversight of public expenditure or allow a person to access their own personal information.

When considering these factors, I have weighed them against the following public interest factors against disclosure, namely that:

- the information is not well known and is not available from publicly-accessible resources;
- disclosure of the material would reasonably be expected to:
 - cause a reduction in both the quantity or quality of business information flowing to the government;
 - prejudice the department’s ability to develop and maintain effective and productive working relationships with members of the Uranium Council; and
 - prejudice the department’s ability to obtain information pertinent to policy reforms and trade relations in respect of the Australian uranium industry.

Where possible and as identified in the Schedule, I have deleted the exempt material in these folios and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

If you are dissatisfied with my decision, your review rights are set out in ATTACHMENT A.

Please do not hesitate to contact the FOI team on (02) 6276 1597, or by email to foi@industry.gov.au if you require any further clarification.

Yours sincerely



Michael Sheldrick
General Manager
Onshore Energy Branch

11 January 2017

REVIEW RIGHTS**ATTACHMENT A****Application for Internal Review**

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter, or within 15 days of receipt of the documents to which this decision relates (whichever is the longer period). You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying).

While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator
Department of Industry, Innovation and Science
GPO Box 9839
CANBERRA ACT 2601

Or by e-mail to: FOI@industry.gov.au

Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply for review of my decision by the Australian Information Commissioner. An application for review by the Australian Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Australian Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Australian Information Commissioner.

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

Online: www.oaic.gov.au
Post: GPO Box 2999, Canberra ACT 2601
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will make a completely independent investigation of your complaint. You can make a complaint by telephone, in person, in writing, by fax, or using the online complaint form. Further information about making a complaint is available at:

<http://www.ombudsman.gov.au/pages/making-a-complaint/>

Request for Information under the *Freedom of Information Act 1982*
SCHEDULE OF DOCUMENTS – Dan Monceaux
Department of Industry, Innovation and Science

No.	Description of document	Folios	Decision	Reasons
1	Record of Meeting 7 Jun 2011	1-10	Released in part.	Exemptions claimed s47(1)(b)(material disclosing trade secrets or commercially valuable information), s47F(personal information) and s47G(business affairs).
2.	Record of Meeting 12 Dec 2011	11-20	Released in part.	Exemptions claimed s47(1)(b)(material disclosing trade secrets or commercially valuable information) , s47F(personal information) and s47G (business affairs).
3.	Record of Meeting 12 Jun 2012	21-32	Released in part.	Exemptions claimed s47(1)(b)(material disclosing trade secrets or commercially valuable information), s47F(personal information) and s47G(business affairs).
4.	Record of Meeting 13 Jun 2013	33-40	Released in part.	Exemptions claimed s45(material obtained in confidence), s47(1)(b)(material disclosing trade secrets or commercially valuable information) , s47F(personal information) and s47G(business affairs).
5.	Record of Meeting 12 Jun 2014	41-48	Released in part.	Exemptions claimed s47(1)(b)(material disclosing trade secrets or commercially valuable information) , s47F(personal information) and s47G(business affairs).
6.	Record of Meeting 11 Jun 2015	49-57	Released in part.	Exemptions claimed s47(1)(b)(material disclosing trade secrets or commercially valuable information), s47F (personal information) and s47G(business affairs).
7.	Record of Meeting 6 Jun 2016	58-64	Released in part.	Exemptions claimed s47(1)(b)(material disclosing trade secrets or commercially valuable information), s47F (personal information) and s47G(business affairs).

