



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2016/164

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: CD
Right to Know

DECISION BY: Ms Helen Owens
Assistant Secretary
Public Data Branch

FOI request

In an email dated 8 September 2016 the applicant made a request to the Department of the Prime Minister and Cabinet under the *Freedom of Information Act 1982* (the FOI Act) seeking access to the following documents:

- 1) *"meeting minutes from the Secretaries Data Group" from the previous twelve months that relate to "data integration", "data linking", "data linkage", "data matching" and "data merging" as outlined here: <http://statistical-data-integration.govspace.gov.au/about-3/what-is-statistical-data-integration/>*

Authorised decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Secretary of the Department under section 23 of the FOI Act.

Searches

I arranged for searches of the Department's electronic and other records to be undertaken and made inquiries with officers who had knowledge of the subject matter and would be likely to be able to locate documents within the scope of the request.

As a result of these searches I have identified three documents that fall within the scope of the request. The attached schedule of documents provides a description of each document that falls within the scope of the request and the access decision for each of those documents.

Decision

With regard to the documents identified, I have decided

- to grant access to an edited copy of documents 1, and 3 with irrelevant matter deleted under section 22

- to grant access to an edited copy of document 2 with material exempt under section 47B (Commonwealth-State relations) and irrelevant matter deleted under section 22

My reasons for the decision appear below.

Reasons for decision

Section 47B – Commonwealth-State Relations

A document is conditionally exempt under section 47B of the FOI Act if its disclosure:

- (a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or
- (b) would divulge information or matter communicated in confidence by or on behalf of the government of a State to the government of the Commonwealth.

Document 2 contains information about outcomes of a Council of Australian Governments (COAG) senior officers' meeting.

COAG is the peak intergovernmental forum in Australia. The members of COAG are the Prime Minister, State and Territory Premiers and Chief Ministers and the President of the Australian Local Government Association (ALGA). The Prime Minister chairs COAG. The role of COAG is to promote policy reforms that are of national significance, or which need co-ordinated action by all Australian governments. To enable its work, COAG has a number of Councils and is supported by senior officers' for all jurisdictions.

Fundamental to the operation of COAG is an understanding between members that they are able to deliberate confidentially and that members will not disclose the content of consultations or the outcomes of meetings without agreement from all other members. The *Guidance on COAG Councils* published by the Department in August 2016 captures this understanding in the section on recordkeeping, which makes clear (at paragraphs 5.2.4.2 and 5.2.4.3) that

Documents prepared for councils and officials should be treated as sensitive, unless otherwise agreed by either group, and only distributed on a strict need to know basis.

Where there is an expectation that a document will be made public (for example, communiqués or public records of meetings), all members should be advised early in the preparation of the document.

In this context, disclosure of information in document 2 about a COAG meeting could reasonably be expected to damage relations between the Commonwealth and one or more States by undermining confidence in the willingness of the Commonwealth to maintain confidentiality of COAG processes in accordance with the shared understanding of members.

Accordingly, I am satisfied that part of document 2 is conditionally exempt from disclosure under section 47B of the FOI Act.

Section 11A(5) - Public interest

Section 11A(5) of the FOI Act provides that access must generally be given to a conditionally exempt document unless it would, on balance, be contrary to the public interest. In determining whether disclosing the conditionally exempt information would, on balance, be contrary to the public interest, I have not taken into account any irrelevant factors identified in section 11B(4) of the FOI Act. I have considered the public interest factors favouring disclosure identified in section 11B(3) and have had regard to the FOI Guidelines.

Public interest factors favouring access

I have identified the following factors in favour of disclosure as relevant:

- Promoting the objects of the FOI Act;
- Informing debate on a matter of public importance.

Disclosure of the information in document 2 would promote the objects of the FOI Act by providing additional information on use of government data, which is a matter of public importance. It has the potential to increase scrutiny and discussion of government activities.

Public interest factors against access

The FOI Act does not specify any factors against disclosure. I have identified the following factors that I consider relevant:

- Protecting the viability of the peak intergovernmental forum
- Protecting commonwealth-state relations to ensure effective collaboration on national policy development.

Disclosure of some information in document 2 would undermine a well-established forum for confidential discussion and collaboration between States, Territories and Commonwealth governments. Access to that information would add little to public discussion on the topic of use of government data. An essential forum for confidential consultation and deliberation between State and Commonwealth government agencies would be made less effective through loss of confidence between members without providing any commensurate public benefit.

Balancing the public interest

I am satisfied that the public interest factors against disclosure outweigh the public interest factors favouring disclosure. As a result, I am satisfied that disclosing this conditionally exempt material in document 2 would, on balance, be contrary to the public interest. Accordingly, I am satisfied that it is exempt from disclosure under sections 47B and 47C of the FOI Act.

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act provides that exempt or irrelevant material may be deleted from a copy of a document and access granted to that edited copy, where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy.

Section 22 of the FOI Act provides that:

(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*
- (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*

(c) 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*

(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.*

Document 1, 2 and 3 contain material that I am satisfied is irrelevant to the request because it is not within the scope of the request. Document 2 contains material that I am satisfied is exempt from disclosure under section 47B of the FOI Act. I am satisfied that it is reasonably practicable to make edited copies of those documents with the irrelevant material deleted.

Publication of Documents

Section 11C of the FOI Act requires agencies to publish information to which access has been given in accordance with the FOI Act. Section 11C(6) of the FOI Act requires agencies to publish the information within 10 working days of granting the applicant access to documents.

Review rights

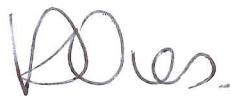
Information about the applicant's rights of review is attached to this decision.

Complaint rights

The applicant may make a complaint to the Information Commissioner about the Department's actions in relation to this decision. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/foi-complaints>.

A complaint to the Information Commissioner must be in writing and identify the agency in respect of which the complaint is made. The Office of the Australian Information Commissioner (OAIC) may be contacted by phone (1300 363 992), email (enquiries@oaic.gov.au) or by letter (GPO Box 5218 Sydney NSW 2001). Further information about the OAIC can be found on their website: <https://www.oaic.gov.au/>

If the applicant has any queries in relation to the decision they may contact the Department by email at FOI@pmc.gov.au or by telephone on (02) 6271 5849.



Ms Helen Owens
Assistant Secretary
Public Data Branch

6 October 2016

Attachments:

Schedule of documents

Document 1

Document 2

Document 3



SCHEDULE OF DOCUMENTS
FOI REQUEST: FOI/2016/164

FOI

Document	Date	Description	Number of pages	Decision
1		Draft minutes of Secretaries' Data Group 9 November 2015	2	Grant access with redactions - section 22 (irrelevant matter)
2		Draft minutes of Secretaries' Data Group 26 February 2016	3	Grant access with redactions - section 22 (irrelevant matter) and section 47B (Commonwealth-State relations)
3		Draft minutes of Secretaries' Data Group 29 April 2016	2	Grant access with redactions - section 22 (irrelevant matter)



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or 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 someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request 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 the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency 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 the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

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

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see [How do I make an FOI complaint?](#)

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

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency 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. The Information Commissioner's review is free.

How do I apply?

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 5218, Sydney NSW 2001
fax: +61 2 9284 9666
email: enquixxxx@xxxx.xxv.au
in person: Level 3
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at 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.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

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 Information Commissioner 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.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: xxxxxxxxx@xxxx.xxx.au

write: GPO Box 5218, Sydney NSW 2001
or visit our website at www.oaic.gov.au