



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2016/163

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:

documents produced for, during and after the "Legislative and Other Barriers Workshop" conducted by DPM&C on December 11 2015 where representatives from across the APS met to identify legislative barriers to the release, use, and reuse of public data.

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 five 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 in full to documents 2, 3 and 5;

- to grant access to an edited copy of document 1 with irrelevant matter deleted under section 22; and
- to refuse access to document 4 under section 47C (Public interest conditional exemptions – deliberative processes) as providing access would be contrary to the public interest.

As document 5 is publicly available on the website of the Productivity Commission at http://www.pc.gov.au/data/assets/pdf_file/0018/202446/sub020-data-access.pdf a copy has not been provided with this decision. If the applicant experiences any difficulty in obtaining an electronic copy of the document it will be provided separately on request.

My reasons for the decision appear below.

Reasons for decision

Section 47C – Deliberative processes conditional exemption

Section 47C of the FOI Act provides that documents are conditionally exempt from disclosure if their disclosure would disclose **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 an agency or a Minister.

Section 47C(2) provides that **deliberative matter** does not include purely factual material. However, as the *Guidelines* issued by the Australian Information Commissioner under section 93A of the FOI Act (the FOI Guidelines) explain at paragraph 6.73, where factual and deliberative material are so intertwined that it is not possible to separate them, both elements may be deliberative.

Document 4 is a draft summary of the proceedings of a workshop conducted by the Department on *legislative and other barriers to sharing and publishing data*. The workshop was held to enable officers of a number of Commonwealth government agencies to meet to discuss issues relevant to development of policy about use of government-held information. Development of policy on that topic is a responsibility of the Department. The workshop was an activity of the Department designed to enable it to consult with other agencies and to obtain from them advice, opinion and recommendations on issues to be addressed as well as policy directions to be considered. Participation in the workshop was on the basis that the consultation would be confidential and that participants would be free to express opinions that were their own rather than those of the agencies for which they worked. This understanding is reflected in a statement on the cover of the draft summary.

Document 4 is a draft. It was created to assist in consultation and deliberation about policy issues. As a draft, it contains the opinions of workshop attendees from the Department about what views were expressed by other attendees and was intended to be circulated as a means of further consultation about the issues discussed.

I am satisfied that document 4 consists of deliberative matter as it was created in the course of and for the purposes of deliberative processes involved in the functions of the Department. I am satisfied that document 4 contains deliberative matter as it includes opinion and advice obtained and recorded for the purposes of deliberative processes involved in the functions of the Department and that any factual material contained in it is so intertwined with the deliberative matter that it is not possible to separate them.

As a result, I am satisfied that document 4 is conditionally exempt from disclosure under section 47C 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 disclosing the documents would, on balance, be contrary to the public interest. My weighing of public interest factors follows.

Section 11B of the FOI Act lists the public interest factors favouring access. Of these factors, I consider that two are relevant to your request: promoting the objects of the FOI Act and informing debate on a matter of public importance.

The FOI Act does not list any specific factors weighing against disclosure, however I have identified the following factors as relevant: disclosure could reasonably be expected to inhibit officers of this department and other agencies from providing frank advice and opinions on issues relating to use and disclosure of government-held data; disclosure could reasonably be expected to adversely affect the Department's capacity to conduct similar consultations in the future.

Disclosure of document 4 would be contrary to the understanding of confidentiality under which participants engaged in discussion at the workshop and would make it more difficult for the Department to consult in the same way in the future. Without the capacity to engage in free, frank, confidential consultations the Department would be seriously inhibited in its ability to develop policy in this area. Similarly, the Department's ability to carry out its function of developing policy on use and disclosure of government-held data would be severely adversely affected if officers were not able to freely exchange opinions and engage in robust discussions without the possibility that they would be publicly disclosed.

I have weighed these factors against the factors favouring disclosure and am satisfied that the factors against disclosure outweigh the factors in favour of disclosure. I am therefore satisfied that disclosure of this deliberative material would be contrary to the public interest.

In determining whether disclosing this conditionally exempt document 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.

As a result I am satisfied that document 4 is conditionally exempt under section 47C of the FOI Act and that disclosure of this deliberative material would be contrary to the public interest.

Section 22 – irrelevant matter

As advised in the Department's acknowledgement of the request on 22 September 2016, it is the usual practice of the Department to not disclose the names and contact details of junior officers of the Department and other government agencies, where that personal information is contained in documents within scope of a request. The Department also advised that unless the applicant advised that personal information of junior officers should be considered as part of the request, it would be considered outside the scope.

As the applicant did not advise that personal information of junior officers should be considered within the scope of the request, I have edited this information from document 1 under section 22 of the FOI Act.

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/2016/163

FOI

Document	Date	Description	Number of pages	Decision
1		Invitation	3	Grant access with redactions - section 22 (irrelevant matter)
2		Agenda	1	Grant access in full
3		Power Point presentation	4	Grant access in full
4		Draft workshop report	9	Refuse access
5		The Department of the Prime Minister & Cabinet's submission to the Productivity Commission's Inquiry into Data Availability and Use	42	Grant access in full



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