



In reply please quote

30/5958

Simon

By email: [foi+request-2326-89303b9c@righttoknow.org.au](mailto:foi+request-2326-89303b9c@righttoknow.org.au)

Dear Simon

**Freedom of Information Request: Cost/Benefit Analysis of Bureau of Meteorology smart-phone weather application – Decision on access**

1. I refer to your application under the *Freedom of Information Act 1982* (FOI Act), made 8 October 2016.
2. On 2 November 2016, the Bureau wrote to inform you that processing time had been extended until 7 December 2016 to allow for third party consultation under Section 27 of the FOI Act.
3. On 14 November 2016, the Bureau notified you that a charge was payable for provision of the access to the documents requested, and that the time for processing would be extended for the period the charge remained unpaid. On 30 November 2016 you requested a waiver of the charges and on 21 December 2016 I notified you of my decision to re-assess and reduce the charge. Your payment of the charge was received on 19 January 2017.
4. The time for processing your request has been extended to allow for the periods of time during which the charge remained unpaid and the time for making the decision to reduce the charge, in accordance with s 29 of the FOI Act.
5. I am authorised to make a decision in relation to your request for access to documents and your request for a waiver of charges, pursuant to s 23 of the FOI Act. My decision and reasons for decision follow.
6. Attached to my decision is a Schedule of documents identified as relevant to the scope of your request. Where appropriate, this includes my decision on exemptions and the relevant sections under the FOI Act.

***Your request***

7. You have requested access to the following:

*'...the Cost Benefit Analysis and related or similar documents regarding the recently released BOM smart-phone weather app'*

***Material considered in making decision***

8. In making my decision in relation to each document I have considered:
  - the document;
  - the FOI Act;
  - where relevant, third party submissions; and

- the Office of the Australian Information Commissioner, *Guidelines under s 93A of the FOI Act* (FOI Guidelines).

### ***My decision***

9. All reasonable searches for documents falling within the scope your request have been carried out and one document has been identified in scope.
10. I have decided that parts of the document regarding business affairs are exempt under s 47G of the FOI Act.
11. I have decided to defer your access to the document. This is in order to provide any aggrieved third parties with an opportunity to seek a review of my decision to release the material, in accordance with subsection 27(7) of the FOI Act. Subsection 27(7) states that I must not give you access to documents unless:
  - after all the opportunities of the person or organisation concerned for review of appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.
12. The reasons for my decision to exempt parts of the document and to defer your access to the document are set out in the following paragraphs.

### ***Reasons for decision***

#### *Consultation – business documents*

13. Section 27 of the FOI Act and related parts of the Guidelines set out the process for consultation with third parties in regard to documents which may relate to their business, commercial or financial affairs.
14. Under s 27 of the FOI Act, where a document in scope of a request contains business information *and* it appears that the organisation might reasonably wish to make a contention that the document is exempt under s 47 (trade secrets) or s 47G (business information), the agency must not make a decision on access to the document unless the organisation is given a reasonable opportunity to make submissions.
15. Paragraph 3.76 of the Guidelines states:
  - Where an agency or minister is required to consult with a third party:
    - The timeframe for making a decision is extended by 30 days
    - Any submissions by the third party must be considered
    - The third party must be given notice of the decision and their review rights, and
    - The applicant will only be given access to a document when the third party's opportunities for review have run out.
16. Consultation under s 27 of the Act took place with a relevant third party in regard to the document in scope of your request. I have taken submissions from the third party into consideration in making my decision. I have decided that parts of the document are exempt under s 47G and that the remaining parts of the document are not exempt and can be released to you.
17. However, your access to those parts of the document that are not exempt will be deferred until all opportunities for review or appeal of this decision by the third party concerned, have run out and this decision still stands.

18. I have set out my reasons for finding parts of the document exempt under s 47G Business affairs in the following section.

Material exempt under s 47G - business

19. I have decided that parts of the document are conditionally exempt from release, under s 47G, on grounds of business affairs. Section 47G(1)(a) of the FOI Act permits conditional exemption of documents that:

- contain information concerning business or professional affairs; or
- contain information concerning the business, commercial or financial affairs of an organisation;

*if*

- disclosure would, or could reasonably be expected to, unreasonably affect a person or business in respect of lawful business, commercial or financial affairs.

20. I have decided that parts of these documents that relate to the identity of a third party and their methodology used in preparing parts of the document are conditionally exempt under section 47G(1)(a), on the basis that the disclosure of the information could be expected to have an unreasonable effect on the organisation's business, commercial or financial affairs.

Public interest test

21. Conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest (s 11A(5)). To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision-maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

22. Section 11B of the FOI Act sets out the public interest exemption factors favouring access (subs (3)) and irrelevant factors (subs (4)). I have not had regard to any irrelevant factors. In balancing the public interest in this case, I have considered the factors for and against disclosure, as set out in the following paragraphs.

Factors in favour of disclosure:

23. In accordance with s 11B(3) of the FOI Act, I have considered whether access to the documents would:

- (a) promote the objects of the Act (including all matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

24. In favour of access, I acknowledge that the release of the material under consideration may, to a small extent, increase scrutiny, discussion, comment or review of Government activities and facilitate access to information about the Bureau's actions.

Factors weighing against disclosure

25. The release of the conditionally exempt material would, or could reasonably be expected to, affect the business affairs of the third party - this weighs strongly against disclosure of the material. Also against disclosure, I note that release of the material does not:

- inform a matter of public importance; nor

- provide effective oversight of public expenditure; nor
- shed any light on the way the Bureau conducts its operations; nor
- provide you access to your own personal information.

My decision on disclosure of material conditionally exempt under s 47G:

26. Taking into account the factors in this matter, on balance the disclosure of the information is contrary to the public interest. Accordingly, I have decided that parts of the documents are exempt under s 47G of the FOI Act.

Deferred access to the document

27. As set out above, I must not provide you with access to the non-exempt material until all opportunities for review or appeal of this decision by the third party have run out *and* this decision still stands.
28. The Bureau will contact you in regard to provision of the non-exempt material, once the appeal period has concluded.

**Review Rights**

29. If you are dissatisfied with this decision, you have certain rights of review available to you.
30. 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.
31. 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:
- Freedom of Information Officer  
Bureau of Meteorology  
GPO Box 1289 Melbourne 3001
32. 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.

**External review by the Australian Information Commissioner**

33. Alternatively, under 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.
34. The 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 Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

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

Information Commissioner

GPO Box 5218

Sydney NSW 2001

***Complaints to Ombudsman or Information Commissioner***

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

37. 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)

38. Your enquiries to the Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

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

39. There is no particular form required to make a complaint to the Ombudsman or the 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 the Bureau of Meteorology as the relevant agency.

***For further information***

40. If you have any questions about this letter, or need further information, please do not hesitate to contact [FOI@bom.gov.au](mailto:FOI@bom.gov.au)

Yours sincerely



Alistair Kemp

Assistant Director Plan (Information Systems & Services Division)

13 February 2017