



**Australian Government**  
**Department of Finance**

Reference: FOI 16/126  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Mr Jackson Gothe-Snape

via email: [foi+request-2731-ccfd6254@righttoknow.org.au](mailto:foi+request-2731-ccfd6254@righttoknow.org.au)

Dear Mr Gothe-Snape,

**Freedom of Information Request – FOI 16/126**

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

*Can you please provide the topics list for briefs created in preparation for hearings of Senate 2016-2017 Supplementary Budget Estimates.*

**Authorised decision-maker**

In accordance with subsection 23(1) of the FOI Act, I am authorised to make a decision regarding access under the FOI Act.

**Decision**

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the document that falls within the scope of your request;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

I have decided to release one document, in part with information exempt under s34 (Cabinet) and s47F (Personal privacy). Please find a schedule of documents at [Attachment A](#).

## **Section 17 – Requests involving use of computers**

Under the FOI Act, there is a right to request access to documents held by an agency. Your request is for access to information that does not exist in a discrete document form.

As such, I have considered section 17 of the FOI Act, which prescribes:

- (1) *Where:*
  - (a) *a request ... is made in accordance with the requirements of subsection 15(2) to an agency;*
  - (b) *it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and*
  - (ba) *it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and*
  - (c) *the agency could produce a written document containing the information in a discrete form by:*
    - (i) *the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or*
    - (ii) *the making of a transcript from a sound recording held in the agency**the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.*
- (2) *An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.*

Paragraph 3.182 of the FOI Guidelines states that the obligation to produce a written document arises if:

- *the agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and*
- *producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).*

*If those conditions are met the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.*

I consider that the information you have requested does not exist in discrete document form but that Finance can produce a document containing the information using computers that are ordinarily available within the agency. I am satisfied that to produce the document would not substantially and unreasonably divert the resources of the agency from its other operations. Therefore, as per section 17 of the FOI Act, I have created a discrete document containing the information that you have requested access to.

## **Section 34 – Cabinet documents**

Section 34 of the FOI Act prescribes that:

- (1) A document is an exempt document if:
    - (a) both of the following are satisfied:
      - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
      - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or**
    - (b) it is an official record of the Cabinet; or*
    - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
    - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.**
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.*
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

In accordance with the procedural requirements for documents prepared for the Cabinet or its committees, Finance sought views from the Department of the Prime Minister and Cabinet (PM&C). Having regard to the views of PM&C, and having considered the matter myself, I have decided that the document contains exempt information, specifically Cabinet deliberations. Accordingly, I have decided that the information identified in the document is exempt on the basis of subsection 34(3) of the FOI Act.

## **Section 47F – Personal privacy**

Section 47F of the FOI Act prescribes that:

- (1) 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).*

Personal information is defined in 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 information could reasonably be expected to provide such detail as to be able to ascertain the identity of the individual or individuals concerned. I am therefore satisfied that the documents contain personal information.

Subsection 47F(2) of the FOI Act prescribes that:

*(2) In determining whether the disclosure of a document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*

- (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;*
- (d) any other matters that the agency or Minister considers relevant.*

I consider that the personal information contained within the document is not well known and is not generally available from publicly accessible sources. I consider that disclosure at this time could place stress on the individuals concerned. As such, I am of the view that the information redacted from the document would be unreasonable to disclose.

#### *Public Interest Test*

Having formed the view that the document contains personal information that would be unreasonable to disclose, I am now required to consider the public interest test for the purposes of working out whether access to the conditionally exempt information would, on balance, be contrary to the public interest.

I have considered the following factors favouring disclosure as prescribed by subsection 11B(3) of the FOI Act.

- *Release of the document would promote the objects of the Act:* I note that release of this information would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible. However, I do not consider that the release of this information would contribute to the other objectives of the FOI Act, and as such place little weight on this factor.
- *Release of the document would inform debate on a matter of public importance:* I consider that release of the redacted information would not provide a contribution to informing debate on a public matter.
- *Release would promote effective oversight of public expenditure:* The material redacted would not promote effective oversight of public expenditure any more than releasing the document with the material.

Subsection 11B(5) of the FOI Act prescribes that:

*(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information commissioner for the purposes of this subsection under section 93A.*

As such, I have considered the following factor, set out in the OAIC Guidelines, against disclosure of the document:

- *Release of the documents could reasonably be expected to prejudice the protection of an individual's right to privacy:* an individual's right to privacy is a strong

consideration and compelling reasons need to exist in order to override that right. The document contains personal information about third parties. I consider that the release of this information could reasonably be expected to prejudice the individual's right to privacy.

I have not given any consideration to the irrelevant factors prescribed in subsection 11B(4) of the FOI Act.

Taking into account all the factors set out above, I have determined that the document contains information of a personal nature that would be unreasonable to disclose and that the factors against disclosure outweigh the factors in favour of disclosure. As such, I find that the relevant parts of the document requested are conditionally exempt under section 47F of the FOI Act and providing access to those parts of the document would, on balance, be contrary to the public interest. I have decided to provide you access, in part, to the document with the exempt material deleted under the provisions of section 47F of the FOI Act.

### **Charges**

No charges were imposed for the processing of this request.

### **Review and appeal rights**

You are entitled to request an internal review or a review by the Office of the Australian Information Commissioner (OAIC) of my decision. The process for review and appeal rights is set out at [Attachment B](#).

### **Publication**

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log ([www.finance.gov.au](http://www.finance.gov.au)) as soon as possible. Finance's policy is to publish the documents within one working day after they are released to you.

### **Further Information**

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,



Carolyn Driessen  
Assistant Secretary  
Parliamentary and Coordination Branch  
Department of Finance  
15 December 2016

ATTACHMENT A

SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. FOI 16/40

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision
1	N/A	2	Finance	N/A	Subject list of briefs.	Release in part with information exempt under s34 and s47F.



**Australian Government**  
**Department of Finance**

## Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) 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 you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, 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 Finance, or external review by the Australian Information Commissioner.

### Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance 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 Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

### *How to apply for internal review*

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why. You can lodge your application in writing through one of the contact details provided at the end of this document.

### **Review by the Australian Information Commissioner (IC)**

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

review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant

decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

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 IC 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.

### ***Do I have to go through Finance's internal review process first?***

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance 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. Review by the IC is currently free.

### ***How do I apply?***

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

**Post:** Office of the Australian Information Commissioner  
GPO Box 2999  
CANBERRA ACT 2601  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**Fax:** 02 9284 9666  
**In person:** Level 3  
175 Pitt Street  
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website ([www.oaic.gov.au](http://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.

### ***Making a complaint***

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

### ***When can I go to the Administrative Appeals Tribunal (AAT)?***

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is currently \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

### ***Investigation by the Ombudsman***

The Commonwealth Ombudsman can also investigate complaints about action taken by

agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

**Post:** Commonwealth Ombudsman  
PO Box 442  
CANBERRA ACT 2601  
**Phone:** 02 6276 0111  
1300 362 072

#### **Finance FOI contact details**

FOI Coordinator  
Legal Services Branch  
Department of Finance  
John Gorton Building  
King Edward Terrace  
PARKES ACT 2600  
**Phone:** 02 6215 1783  
**Email:** [foi@finance.gov.au](mailto:foi@finance.gov.au)  
**Website:** [www.finance.gov.au/foi/foi.html](http://www.finance.gov.au/foi/foi.html)