



## Australian Government

### Department of Finance

Reference: FOI 16/128  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Mr Geoff Winestock

via email: [foi+request-2759-af3376bb@righttoknow.org.au](mailto:foi+request-2759-af3376bb@righttoknow.org.au)

Dear Mr Winestock

### Freedom of Information Request – FOI 16/128

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).

*I am seeking access to any correspondence in the Department of Finance's possession with either NBN or credit rating agencies that discusses the request for the credit rating, the negotiations for obtaining the credit rating or the final credit rating itself.*

*I am also seeking any documents relating to that topic used in the preparation of the 18 November press release.*

On 7 December 2016, Finance notified you that part of your request had been transferred to NBN Co Limited (nbn) to process. As such, my decision relates to the following part of your request:

*I am also seeking any documents relating to that topic used in the preparation of the 18 November press release.*

nbn will process the remaining part of your request.

### Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents 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 documents that fall 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 three documents in part. The documents that I have decided to release are identified in the Schedule at Attachment A.

The material that I consider to be exempt from release, has been redacted under section 47C (deliberative process).

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

Section 22 of the FOI Act allows for the deletion of exempt or irrelevant matter from a document that may allow for an edited form of the document to be released. I have decided that edited copies of certain documents can be released to you under this category. The documents are identified in the Schedule at Attachment A.

You were notified on 14 December 2016 via an email from Finance, that unless you otherwise objected, junior officer names and contact details (non-SES officers) and staff employed under the *Members of Parliament (Staff) Act 1984* (advisor level and below) would be redacted under section 22 of the FOI Act. As we did not receive any objections from you, we have redacted this material from the documents.

In addition, I have removed information that is not relevant to the scope of your request under section 22 of the FOI Act. In particular, information that does not relate to the topic used in the preparation of the 18 November press release.

### **Section 47C - Deliberative documents**

I have decided that the documents contain information that is conditionally exempt under section 47C of the FOI Act, which provides:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**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:*

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth.*

The OAIC Guidelines further expand on this provision by stating:

*6.56 A document may be conditionally exempt if it includes deliberative matter.*

*Deliberative matter is content that is in the nature of or relating to either:*

- an opinion, advice or recommendation that has been obtained, prepared or recorded*
- a consultation or deliberation that has taken place*
- in the course of or for the purposes of a deliberative process of the agency or minister (s 47C(1)).*

*6. 62 A deliberative process involves the exercise of judgement in developing and making a selection from different options*

I am satisfied that the documents contain matter that is deliberative under section 47C of the FOI Act. The documents contain opinions and recommendations prepared as part of Finance's deliberative processes of providing advice to the Minister for Finance. In

particular, the consultation and advice processes surrounding the preparation of press releases. Release of parts of the documents would disclose deliberative matter. As such, I consider that parts of the documents are conditionally exempt under section 47C of the FOI Act.

This information does not include operational information or purely factual material. Such information and material has not been redacted from the documents. I am also satisfied that document one does not include reports of a scientific or technical expert.

Having formed this view, I am now required to consider whether disclosure of such information would be contrary to the public interest (see 'Public Interest Test' below).

### **Public Interest Test**

Having formed the view that the documents contain deliberative information, I am now required to consider the public interest test for the purposes of working out whether access to a conditionally exempt document 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 documents would promote the objects of the Act:* I note that the release of the exempt information would give the Australian public access to information held by the Commonwealth that would not otherwise be readily accessible.
- *Release of the documents would promote debate on a matter of public interest:* I consider that there is a substantial amount of information already in the public arena in relation to nbn. As such, I do not consider that release of the documents would promote any substantial debate on the topic any more than the information that is already publicly available.

I have also considered the following factors against disclosure of the documents:

- *Disclosure could reasonably be expected to prejudice the functions of the Commonwealth agency:* I consider that release of the exempt information could reasonably be expected to affect Finance's function of preparing and providing advice to the Minister, particularly around deliberative processes. If there was an expectation that deliberative information would be released to the public, this could affect Finance's ability to maintain a trusted relationship between the department and the Minister. This could ultimately prejudice Finance's function of being able to prepare and provide advice to the Minister.
- *Disclosure could reasonably be expected to prejudice the management of information function of a Commonwealth agency:* I consider that disclosure of the exempt documents could undermine Finance's ability to manage information held within the department. There is a reasonable expectation of confidentiality and disclosure could result in a loss of confidence in Finance's ability to handle deliberative information appropriately. This could reasonably be expected to prejudice Finance's ability to oversee nbn's operations and support government processes effectively.

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 factors against disclosure outweigh factors for disclosure of the information and therefore I have determined that certain parts in the documents attached are exempt under section 47C of the FOI Act.

### **Review and appeal rights**

You are entitled to request an internal review or a review by the 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 release 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.

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

Yours sincerely,



Philip Smith  
Assistant Secretary  
Infrastructure Financing Branch  
Department of Finance  
19 December 2016

# ATTACHMENT A

## SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. 16/128

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision
1	27 October 2016	6	Department of Finance	Department of Finance	Email and attachment.	Released in part with information redacted under section 47C. Irrelevant information removed under section 22 of the FOI Act.
2	17 November 2016	3	Department of Communications and the Arts	Department of Finance	Email and attachment.	Released in part with information redacted under section 47C. Irrelevant information removed under section 22 of the FOI Act.
3	18 November 2016	2	Department of Finance	Department of Finance	Email and attachment.	Irrelevant information removed under section 22 of the FOI Act.



## 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 \$884 (from 1 July 2016), 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  
One Canberra Avenue  
FORREST ACT 2603  
**Phone:** 02 6215 1783  
**Email:** [foi@finance.gov.au](mailto:foi@finance.gov.au)  
**Website:** [www.finance.gov.au/foi/foi.h](http://www.finance.gov.au/foi/foi.h)

