



Mr Dan Monceaux

Email: foi+request-2792-5a56faa5@righttoknow.org.au

Dear Mr Monceaux

Freedom of Information Request No. 161107
Decision on Access

I refer to your request of 29 November 2016 to the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**). Your request seeks access to:

all submissions received in response to EPBC referral #2007/3391 - BHP Billiton Olympic Dam Corporation Pty Ltd/Commercial development/Port Bonython/SA/Pilot desalination plant, Olympic Dam Expansion Project.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

Decision

The Department has identified two documents relevant to the scope of your request.

I have decided to:

- **grant access** to Documents 1 and 2 in part, as they contain material that I consider exempt pursuant to sections 47F (personal privacy) and/or irrelevant to the request pursuant to section 22 of the FOI Act.

A schedule describing these documents and my decision in respect of each is at **ATTACHMENT A**. **ATTACHMENT B** contains information regarding your review rights, should you wish to seek review of my decision.

The documents are at **ATTACHMENT C**.

Material considered in making my decision

I had regard to:

- the scope of the FOI request
- the content of the documents subject to your request;
- the relevant provisions in the FOI Act;
- advice from subject matter experts within the Department; and
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

Reasons for decision

Material deleted pursuant to Section 22

Deletion of irrelevant material

Section 22 of the FOI Act allows for information that is irrelevant to your request to be deleted.

The documents captured by your request include the personal information of junior government officers. As iterated in our correspondence of 29 November 2016, the Department considers this material to be irrelevant to the scope of a request where no representation has been made that they be specifically included. The Department has not received a representation to this effect. Accordingly, I have decided that the personal information of junior government officers is irrelevant to the scope of your request and have deleted that information pursuant to section 22 of the FOI Act.

Material exempted pursuant to section 47F

Unreasonable disclosure of personal information

Section 47F(1) of the FOI Act provides that a document is a conditionally exempt document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

For a document to be conditionally exempt I must be satisfied that:

- (a) the information is "personal information" about an individual as defined in the FOI Act; and
- (b) disclosure of the information would be unreasonable in the circumstances.

If satisfied that the documents are conditionally exempt, I can only exempt the document from release where its disclosure would be against the public interest.

Personal information pursuant to section 4 of the FOI Act and section 6 of the *Privacy Act 1988* means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

I am satisfied that Document 1 contains information that meets the definition of "personal information" for the purposes of the FOI Act. This information is the names and email addresses of the individual who wrote the submission and the people who were copied into the email.

In determining whether the disclosure of this personal information would be unreasonable, I gave regard to the following criteria under 47F(2) of the FOI Act:

- (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 Authority considers relevant.

Against these criteria, I have formed a view that:

- (a) the information is not well known;
- (b) the person is not known to be associated with the matters dealt with in the document;
and
- (c) the information is not available from publicly accessible sources.

Against criteria (d), I considered all relevant circumstances, including the nature of the information, the purpose for which the information was obtained, the likelihood of the information being information which the person concerned would not wish to have disclosed, and whether the information has any current relevance as set out in *Re Chandra and Minister for Immigration and Ethnic Affairs*.

On balance, I consider that the disclosure of the personal information is unreasonable and therefore that it is conditionally exempt.

Public Interest Test

To determine whether disclosure of the conditionally exempt personal information would be contrary to the public interest, I must consider those public interest factors favouring access to the personal information and weigh them against those public interest factors against access. If satisfied that the public interest factors against access outweigh those favouring access, I may decide that the personal information contained within Document 1 would be contrary to the public interest, and consequently exempt them from release.

I did not consider any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Section 11B(3) sets out the public interest factors that favour access to conditionally exempt documents:

- (a) promote the objects of this Act (including all the 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.*

Against these factors, I consider that access to the personal information contained within Document 1:

- (a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (section 3(1)(b) of the FOI Act) and that the information is a national resource (section 3(3)).

However, I do not consider that this specific personal information would allow for greater insight into Government decision making (section 3(2)(a)) or that their release would allow for increased discussion or scrutiny of Government activities (section 3(2)(b);

- (b) would not inform debate on a matter of public importance;
- (c) would not promote effective oversight of public expenditure; and
- (d) would not allow a person, being the applicant, access to his or her own personal information.

Paragraph 6.29 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I considered it relevant that access to the documents:

- (a) could reasonably be expected to prejudice the protection of an individual's right to privacy; and
- (b) could reasonably be expected to prejudice the fair treatment of individuals.

After considering the public interest factors favouring access, those against access and the submission of a third party, I consider that the factors against access to outweigh those favouring access, and therefore that release of the personal information to be contrary to the public interest.

I have therefore decided that the personal information contained within Document 1 is exempt from disclosure pursuant to section 47F of the FOI Act.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely



Bruce Edwards
Assistant Secretary
Assessments (WA, SA, NT) and Air Branch

13 December 2016

ATTACHMENTS:

- A.** Schedule of documents
- B.** Information sheet "Your Review Rights"
- C.** Documents subject to your request



Australian Government

Department of the Environment and Energy

ATTACHMENT A

FOI 160901 Schedule of Documents

No	Description	Decision
1	Public submission in the relation to the Pilot desalinisation plant, Olympic Dam Expansion Project	<i>Release in part</i> Section 22 - personal information of government officers Section 47F - personal information of individuals
2	Government of South Australia. Department for Environment and Heritage	<i>Release in part</i> Section 22 - personal information of government officers



YOUR REVIEW RIGHTS

You may seek review of this primary decision either internally by the Department (Internal review), or externally by the Information Commissioner (Information Commissioner review).

Internal review

An Internal review is a review of the decision conducted by a senior officer within the Department. The reviewing officer will not be the same person whom made the primary decision.

If you wish to seek an internal review, you must submit a written application to the Department within 30 days after the day you are notified of this decision. Whilst there is no required form for the written Internal Review application, it is recommended that you include your reasons as to why the primary decision should be reviewed.

The decision on the Internal review will be provided to you within 30 days of the Department receiving your application.

You can submit your written Internal review application to the below addresses:

Email: foi@environment.gov.au

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment
GPO Box 787
Canberra ACT 2601

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, you as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>
Post: GPO Box 5218, Sydney NSW 2001
Fax: 02 9284 9666
Phone: 1300 363 992
Email: enquiries@oaic.gov.au