



17 March 2017

Our reference: LEX 25011

Mr Jackson Gothe-Snape

By email: foi+request-2916-de5345d1@righttoknow.org.au

Dear Mr Gothe-Snape

Decision on your Freedom of Information request

I refer to your revised request, received by the Department of Human Services (the **department**) on 6 February 2017 for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following document:

'the document that was first approved by the Minister that proposes the policy of establishing or implementing Taskforce Integrity '.

My decision

The department holds one document (totalling 14 pages) that relates to your request.

I have decided to **refuse access** to the document.

I have decided that the document you have requested is exempt under section 34 of the FOI Act. This is because it was prepared for the dominant purpose of briefing a minister on a submission to Cabinet.

Please see the schedule at **Attachment A** to this letter for details about the document and the reasons for my decisions, including the relevant sections of the FOI Act.

Processing Charge

On 14 February 2017, the department advised you that the charge for processing your request was \$15.00. The payment of the charge in full was processed on 24 February 2017.

I have considered the actual cost of processing the request, for the purpose of considering whether to adjust the amount of the charge to you under Regulation 10 of the *Freedom of Information (Charges) Regulations 1982*. I am satisfied that the actual cost of processing the request was more than the decision on the charge, and accordingly no adjustment is necessary.

You can ask for a review of our decision

If you disagree with any part of the decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how to arrange a review.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services



LIST OF DOCUMENTS FOR RELEASE
Jackson GOTHE-SNAPE - Right to Know - LEX 25011

Doc No.	Pages	Description	Decision	Exemption	Comments
1.	1 – 14	Cabinet Document	Exempt in full	s 34	s 34 – The document is exempt as it was created for the dominant purpose of briefing a Minister on a cabinet submission.



REASONS FOR DECISION

What you requested

- 'Can you please provide the successful policy proposal from the department for Taskforce Integrity and any emails or meeting notes concerning the drafting of that proposal'.

On 6 February 2017 I sent you a 24AB notification informing you that, based on the wording of your request, it was unclear what documents you were seeking. You revised your request by email on 6 February 2017.

Your revised request was:

- 'the document that was first approved by the Minister that proposes the policy of establishing or implementing Taskforce Integrity'.

What I took into account

- your request dated 6 January 2017 and your revised request on 6 February 2017;
- the document that falls within the scope of your revised request;
- consultations with departmental officers about the nature of the document;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**); and
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that the document that you requested is exempt in full under the FOI Act. My findings of fact and reasons for deciding that an exemption applies are discussed below.

Section 34 of the FOI Act - Cabinet documents

I have applied the exemption in section 34.

Section 34(1) of the FOI Act provides that:

'A document is an exempt document if:

- (a) both of the following are satisfied:
 - (i) it has been submitted to 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.'

The document to which you seek access was bought into existence for the dominant purpose of a Cabinet submission.

Cabinet documents are wholly exempt under the FOI Act. This exemption is 'designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined'.¹

In considering the application of section 34(1)(c) of the FOI Act to the document in the scope of your request I have noted that the word 'consideration' means that the exemption extends to '*a document that is prepared simply to inform Cabinet and whose contents are intended to be noted by its Ministers*'.²

On this basis I am satisfied the document to which you seek access was prepared to brief the Minister on a submission to Cabinet.

Paragraph 5.69 of the Guidelines provide:

'A document that is brought into existence for the dominant purpose of briefing a minister on a submission to Cabinet within the meaning of s 34(1)(a) is an exempt document (s 34(1)(c)). The briefing purpose must have been the dominant purpose at the time of the document's creation'.

The words 'dominant purpose' do not mean that the document could only be created for the primary purpose of submitting the document to Cabinet, but rather that it was created for the dominant purpose of such a submission. I note that the Federal Court has held that a document can be classed as having a dominant purpose '*notwithstanding that some ancillary or subsidiary use of the document was contemplated at the time*'.³ On the basis of this I am satisfied that the document in the scope of your request was created for the dominant purpose of briefing a Minister.

I have also considered the decision of the Australian Information Commissioner in *Nick Xenophon and the Department of Defence* [2016] AICmr 14. The decision makes clear that, when determining whether a document falls within the exemption provided in section 34(1)(c) of the FOI Act:

'The question of dominant purpose will be a question of fact in each case'.

I am satisfied that the factual circumstances surrounding the creation of the document in scope of your request ensure that the document is exempt in full under section 34 of the FOI Act.

The document that falls within the scope of your request was created for the dominant purpose of briefing a Minister on Cabinet documents. I am satisfied that the document you have requested is exempt in full under section 34 of the FOI Act.

¹ Guidelines [5.55]

² *Toomer and Department of Agriculture, Fisheries and Forestry and Ors* [2003] AATA 1301, [67].

³ *Commissioner of Taxation (Cth) v Pratt Holdings Pty Ltd*, [7].



Attachment B

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of an FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of an Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.