



Mr Dan Monceaux

Email: foi+request-2920-e8d59c45@righttoknow.org.au

Dear Mr Monceaux

Freedom of Information Request No. 170102
Decision on Access

I refer to your request of 8 January 2017 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 written submissions received by the department in response the the EPBC Act referral for Oceanic Victor Pty Ltd/Tourism and Recreation/waters off Encounter Bay, 600m SE Victor Harbour/South Australia/Oceanic Victor Viewing Platform Proposal, SA Ref#2015/7592.

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 8 documents relevant to the scope of your request.

I have decided to:

- **grant access** to Document 1 in full;
- **grant access** to Documents 3, 4, 4a, 4b, 5 and 6 in part, as they contain material that I consider exempt pursuant to section 47F of the FOI Act (personal privacy), or irrelevant to the the request pursuant to section 22 of the FOI Act; and
- **refuse access** to Document 2, as it consists of material that I consider exempt pursuant to section 45 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 and the personal contact information of senior government officers. As iterated in our correspondence of 18 January 2017, 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 and the personal contact details of senior officers are irrelevant to the scope of your request and have deleted that information pursuant to section 22 of the FOI Act.

Documents 4 and 5 contain material that did not form part of a submission made in response to the referral EPBC 2015/7592. I have deleted this material pursuant to section 22 of the FOI Act, as it is irrelevant to the scope of the request.

Material exempted under section 45

Confidential information

Under section 45 of the FOI Act, a document is exempt if its disclosure would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

Document 2 is a submission marked 'confidential'. To determine whether its disclosure would found an action in confidence (attracting an exemption under section 45), it must meet the following criteria (*Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434 [443]):

- a) the information must be specifically identified;
- b) the information must have the necessary quality of confidence about it;
- c) the information must have been communicated and received on the basis of a mutual understanding of confidence;
- d) the information must have been disclosed or been threatened to be disclosed without authority; and
- e) the unauthorised disclosure has or will cause the individual to suffer detriment.

Against this criteria, I consider:

- a) The information is specifically identified, being Document 2 in its entirety. This is indicated by the words 'confidential' on its first page.
- b) The information has the necessary quality of confidence as it was communicated only to a known or limited group, namely the Department and more specifically, the section within the Department that assessed the referral decision. The information is not common knowledge or otherwise in the public domain and the quality of confidentiality has not been lost over time.
- c) The information was communicated and received on the basis of a mutual understanding of confidence. As referred above, the submission was marked confidential, and was accepted to the Department in this form. Although the Department did not expressly state that they would treat the submission in confidence, they proceeded to give reference to it in making a decision on EPBC 2015/7592 without seeking amendment of its "confidential" status. It can then be inferred that the Department accepted and understood that the submission was to be treated in confidence.
- d) The author of the submission has not authorised the Department to disclose the document to third parties apart from for the purpose for which the information was provided, that is to be considered by the Minister in making a decision on the referral EPBC 2015/7592.
- e) The author will suffer detriment if the document were to be released being embarrassment, exposure to ridicule or public criticism as a result of their personal views being publicly released.

I have therefore made a decision to exempt Document 2 in its entirety under section 45 of the FOI Act.

Material exempted under section 47F

Personal privacy

Section 47F(1) of the FOI Act provides that where the disclosure of document would result in an unreasonable disclosure of personal information about any person (including a deceased person), that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if access to it would be against the public interest.

Unreasonable disclosure of information

Documents 3, 4, 4a, 4b and 5 contain the names, addresses, email addresses and telephone numbers of members of the public who provided the submissions. I am satisfied that this information is "personal information" for the purposes of the FOI Act.

To determine whether the disclosure of this personal information was 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 consider that:

- (a) the information is not well known;
- (b) the persons are 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), and consistent with the decision in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437, 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.

With reference to my findings above, I consider that any disclosure of the names, addresses, email addresses and telephone numbers of members of the public who provided the submissions contained within the documents would be unreasonable, and therefore that this personal information is conditionally exempt. I will consider whether access to this personal information would be contrary to the public interest.

Contrary to the public interest

To determine whether access to 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 access to the personal information is contrary to the public interest.

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 information:

- (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 names, addresses, email addresses and telephone numbers of members of the public who provided the submissions contained within Documents 3, 4, 4a, 4b and 5:

- (a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (promoting section 3(1)(b)) 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(3));
- (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, further access to his or her own personal information.

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I consider that access to the names, addresses, email addresses and telephone numbers of members of the public who provided the submissions contained within Documents 3, 4, 4a, 4b and 5:

(a) could reasonably be expected to prejudice the protection of an individual's right to privacy; and

After considering the public interest factors favouring access and those against access, I consider that the factors against access to outweigh those favouring access, and that access to the personal information discussed above to be contrary the public interest.

I have therefore decided to withhold access to the conditionally exempt names, addresses, email addresses and telephone numbers of members of the public who provided the submissions contained within Documents 3, 4, 4a, 4b and 5 pursuant to section 47F of the FOI Act.

Disclosure Log

Pursuant to section 11C of the FOI Act, the Department will publish the documents at **ATTACHMENT C** on their website within 10 days of providing you with this decision. Please note, the Department will redact your personal information from Document 1 before publishing.

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

27 February 2017

ATTACHMENTS:

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



FOI 170102 Schedule of Documents

No	Description	Decision
1	Submission from member of the public on referral	<i>Release in full</i>
2	Submission from member of the public on referral	<i>Exempt in full</i> Section 45 - confidential information
3	Submission from member of the public on referral	<i>Release in part</i> Section 47F - personal information of member of public.
4	Email Subject: FW: Case CAS-08082-R6M7M3 is referred to you Attachments: Documents 4a and 4b	<i>Release in part</i> Section 22 - material irrelevant to scope. Section 47F - personal information of member of public.
4a	Submission from member of the public on referral	<i>Release in part</i> Section 47F - personal information of member of public.
4b	Submission from member of the public on referral	<i>Release in part</i> Section 47F - personal information of member of public.
5	Submission from Government agency on referral	<i>Release in part</i> Section 22 - personal information of government officers, material irrelevant to scope. Section 47F - personal information of member of public.
6	Submission from State government agency on referral	<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, yourself 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

