



Mr James Smith

Email: foi+request-3165-9f06baaa@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request No. 170215
Decision on Access

I refer to your request of 26 February 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 documents wherein the outcome of any enterprise bargaining ballots were communicated to the department by the entity who undertook the ballots.

This shall include the YES/NO vote amounts or percentages as well as any additional information related to the vote. For example, a breakdown of the vote by employee location, or APS level.

The scope of this request covers any such documents that were received as a result of EBA offers made to staff under:

Workplace Bargaining Policy 2015

or

Australian Government Public Sector Workplace Bargaining Policy 2014

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 three documents relevant to the scope of your request.

I have decided to **grant access** to Documents 1 to 3 in part as they contain material that I consider exempt pursuant to sections 47F (personal privacy) and 47E(c) (management of personnel) of the FOI Act, 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 and the personal contact information of senior government officers. As iterated in our correspondence of 9 March 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.

Further, Document 2 contains material that did not relate to the outcome of the Enterprise Agreement ballots communicated to the Department by the ballot provider. 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 47E(c)

Management of personnel

Section 47E(c) of the FOI Act provides that where the disclosure of a document would, or could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, 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.

Substantial adverse effect on the management of personnel

Document 3 contains a breakdown of the voting results for the Department's Enterprise Agreement 2016-2019 (**voting breakdown**) by the Division, area, sub-area, branch and location of Departmental staff.

If the information was released it could be used by Departmental employees to identify how their colleagues voted in the Enterprise Agreement ballot. While the ballot provider attempted to ensure no employee could be identified in the breakdown by excluding results from cohorts smaller than 10, the Department has small workplace cohorts where one or two staff voted 'yes' or 'no' respectively and consequently staff in these workplaces would be able to identify the outlying voters. Further, Departmental staff would also be able to identify small cohorts where a majority voted a particular way. When the Department received this information from the ballot provider, the information was handled so as to maintain confidentiality and was not disclosed to staff outside of the team responsible for managing the ballot.

Disclosure of this information enabling Departmental staff to identify how their colleagues may have voted would compromise the integrity of the ballot process. The release of such information would undermine the confidence of Departmental staff in the confidentiality or independence of enterprise ballots. A real and reasonable expectation would also be that disclosure would result in reduced staff participation in future ballots.

Undermined confidence in the ballot process and reduced participation in future ballots would have a substantial and adverse effect on the management of personnel as the enterprise agreement is only accepted when supported by a majority of eligible staff. An enterprise agreement is more representative when a greater number of staff participate in the ballot and this is fundamental to the integrity of the enterprise agreement system. The system is important for personnel management as the Enterprise Agreement contains all the terms and conditions of employment for all APS staff in the Department.

For the reasons above, disclosure of the voting breakdown in Document 3 could reasonably have an adverse effect on the management of personnel in the Department and is conditionally exempt under section 47E(c).

I will now consider whether access to the voting breakdown would be contrary to the public interest.

Contrary to the public interest

To determine whether access to the voting breakdown in Document 3 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 voting breakdown 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 voting breakdown in Document 3:

- (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)).
- (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.

With regards to promoting the objects of the FOI Act, I do not consider that access to the breakdown 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)). This is because the ballot resulted in a 'yes' vote. Whilst the overall number of votes required the Department to apply for the Enterprise Agreement to be approved by the Fair Work Commission, the breakdown of that result did not inform any decisions, reviews, policies or strategies made or developed by the Department.

Further, the information would not inform debate on a matter of public importance as it merely depicts how various cohorts within the Department voted on their own Enterprise Agreement. This is an internal process that does not inform a policy or program that would impact the public.

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 voting breakdown in Document 3:

(a) could reasonably be expected to prejudice the protection of an individual's right to privacy, including where:

- iii. the personal information is that of a government employee in relation to personnel management and the disclosure of the information could be reasonably considered to reveal information about their private disposition or personal life.*
- (k) Could reasonably be expected to harm the interests of an individual or group of individuals*
- (n) Could reasonably be expected to prejudice the management function of an agency*

The release of the conditionally exempt information could be used by Departmental staff to identify how their colleagues voted on the Enterprise Agreement. This vote represents their private dispositions or personal views on their employment terms and conditions. As discussed above, maintaining staff confidentiality and confidence in the ballot process is essential to the integrity of the system. If this information was released staff may be less likely to participate in future ballots, which would prejudice the Department's ability to obtain similar information (votes) in the future and consequently would prejudice the Department's industrial relations functions.

I have decided to release the final results of the vote under FOI, as this number directly informed the Department's decision to proceed to their now current Enterprise Agreement. However, disclosing the breakdown would not further inform the public of the reasons for the Department's decision, and would only serve to harm our management function.

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 voting breakdown in Document 3 pursuant to section 47E(c) 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 1 to 3 contain the names and signatures of private voting provider industry staff. 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 and signatures of private voting provider industry staff 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 and signatures of private voting provider industry staff contained within Documents 1 to 3:

- (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 and signatures of private voting provider industry staff contained within Documents 1 to 3:

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

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 and signatures of private voting provider industry staff contained within Documents 1 to 3 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.

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

A handwritten signature in blue ink, appearing to read 'David Williams', with a stylized flourish at the end.

Mr David Williams
Assistant Secretary
People Strategies Branch
Department of the Environment and Energy

28 March 2017

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 170215 Schedule of Documents

No	Description	Decision
1	Letter Declaration of 2015 ballot result	<i>Release in part</i> Section 47F (personal privacy) – name and signature of private voting provider industry staff
2	Letter Declaration of 2016 ballot result	<i>Release in part</i> Section 22 - material irrelevant to scope Section 47F (personal privacy) – name and signature of private voting provider industry staff
3	Letter Breakdown of 2016 ballot result	<i>Release in part</i> Section 47E(c) (management of personnel) – breakdown of ballot results by Division, area, sub-area, branch and location of Departmental staff would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Commonwealth. Section 47F (personal privacy) – name and signature of private voting provider industry staff



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