



Mr James Smith

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Dear Mr Smith

Freedom of Information Request No. 170215
Internal Review

On 28 March 2017 the Department of the Environment and Energy (the **Department**) made a decision on FOI 170215, a request for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). This decision is at **ATTACHMENT B**.

On 31 March 2017 you sought an internal review of the Department's primary decision and in particular, the decision to redact the 'voting breakdown' in Document 3 pursuant to section 47E(c) of the FOI Act.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make decisions on internal review requests under section 54C of the FOI Act.

Decision

I have decided to affirm the primary decision on FOI 170215 to **grant access** to Document 3 in part as it contains material that I consider exempt pursuant to sections 47F (personal privacy) and 47E(c) (management of personnel) of the FOI Act.

ATTACHMENT A contains information regarding your review rights, should you wish to seek review of my decision.

Material considered in making my decision

I had regard to:

- the request for internal review;
- the primary decision on FOI 170215;
- the scope of the FOI request;
- the content of the document subject to the review;
- 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 internal review decision

Reasons for decision

Your application for internal review submitted that the original decision should be reviewed on the following grounds:

- That the Department benefitted from receiving the voting breakdown during enterprise bargaining
- The Department is able to identify how its staff voted, and this favours disclosure of the information
- The public have a right to this information so as to scrutinise the management of public sector agencies

I will address each of the above grounds in turn.

Your application requested a review of the decision to 'redact the voting breakdown'. 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. In the original decision this voting breakdown was found to be exempt pursuant to section 47E(c) (management of personnel) of the FOI Act, however parts Document 3 were also considered exempt under section 47F (personal privacy). I do not consider your application to be seeking review of the decision to exempt parts of Document 3 under section 47F so I have decided not to address this aspect of the original decision.

The Department benefitted from receiving the voting breakdown during enterprise bargaining

In your application for review, you argued that the Department used the voting breakdown in the Enterprise Agreement bargaining process, giving them an 'upper hand' in negotiations with non-departmental bargaining representatives.

As provided in the original decision, the Department received the voting breakdown for the 2016 Enterprise Agreement ballot after it had closed. As this ballot resulted in a 'yes' vote, there was no subsequent negotiations conducted. The voting breakdown was therefore not used for gaining an advantage in the Enterprise Agreement bargaining process. Further, the voting breakdown was not used for any other decision made or negotiation conducted by the Department.

I therefore consider that the Department did not benefit from receiving the voting breakdown as the negotiations were complete at the time it was received.

The Department is able to identify how its staff voted, and this favours disclosure of the information

In your application for review, you argued that the Department is in a position to identify how individuals voted, that this undermines the integrity of the ballot process and that all Departmental employees have a right to see this information.

As provided in the original decision, the Department is not able to identify how individuals voted as results from cohorts smaller than 10 were excluded from the breakdown. However, Departmental employees with personal knowledge of their immediate workplaces may be able to identify how their colleagues voted. This is particularly relevant to small workplace cohorts with one or two outlying votes.

Even if the Department were able to identify how individuals voted from the breakdown, I do not consider that this would then strengthen an argument that the information should be released to all employees and the public at large.

The public have a right to receive this information to scrutinise the management of public sector agencies

In your application for review, you argued that all Australians have a right to scrutinise the management of public sector agencies.

I consider that this argument was sufficiently addressed in the original decision which that weighed the public interest in providing information held by Government against public interest factors against disclosure. Although I recognise that there is an inherent public interest in providing access to held by the government, I am minded that disclosure of the specific information would prejudice individual's rights to privacy and would prejudice the management function of the Department. Further, I consider that release of this particular information would not allow for greater insight into Government decision making because, as stated in the original decision and above, the voting breakdown was not used to inform any decisions, reviews, policies or strategies made or developed by the Department.

Affirmation of original decision

I have reviewed the original FOI request, the voting breakdown subject to this review and the subsequent decision on access to it.

I agree with the reasons for the exemption claimed in respect of the voting breakdown in Document 3, and have decided to affirm the primary decision that it is conditionally exempt under section 47E(c) of the FOI Act and access to it would be contrary to the public interest.

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



Paula Goodwin

First Assistant Secretary and Chief Operating Officer
Corporate Strategies Division

27 April 2017

ATTACHMENTS:

A. Your review rights

B. FOI 170215 Access decision letter, dated 28 March 2017



YOUR REVIEW RIGHTS

You may seek review of this internal review decision externally by the Information Commissioner (Information Commissioner review).

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

