



24 April 2017

Mr Philip Nelson

Via email only: foi+request-3212-b75c937b@righttoknow.org.au

Dear Mr Nelson

Freedom of Information request Ref:17-6

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982 (FOI Act)*.

Background to Decision

On Thursday, 9 March 2017 using the 'Right to Know' website, you emailed the Department of Health and requested access to documents. The Department of Health transferred your request under section 16 of the FOI Act, to the Australian Sports Anti-Doping Authority (**ASADA**) as the subject matter of the documents you are seeking is more closely connected with the functions of this agency.

Your request was received by ASADA on Tuesday, 14 March 2017. On Thursday 16 March 2017 an email was sent to you via 'righttoknow.org.au'. That correspondence included an acknowledgment of your request and confirmation of the scope of your request. You have not advised us of any change to the scope of your request.

Specifically you sought access to:

- *A copy of the letter to which Mr McDevitt referred in his opening statement to the Community Affairs Legislation Committee on Wednesday 1 March 2017 in which the Chair of that Committee was satisfied that Mr McDevitt had not provided the Committee with false or misleading evidence; and*
- *Any correspondence (electronic and print) between ASADA and Health and Senate Standing Committee officials in preparing and finalising that advice.*

Authority and Materials Considered

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

In reaching my decision I have taken into consideration:

- the relevant provisions of the FOI Act;
- relevant guidelines issued by the Office of the Australian Information Commissioner; and
- relevant Tribunal and Federal Court decisions concerning the operation of the FOI Act.

Summary of Decision

Having regard to these matters I have identified two (2) documents as being within the scope of your request. These documents are outlined at **Annexure A**. I have refused your request for access to Document 1 and granted access to Document 2. A copy of the exemption provisions relied on in reaching this decision are extracted at **Annexure B**.

Reasons for Decision

Document 1

Document 1 is a copy of the CEO correspondence to the Senate Committee Chair.

Section 46(c) - Documents the release of which would be contempt of Parliament

Section 46 of the FOI Act provides that a document is exempt if public disclosure of the document would, apart from the FOI Act and immunity of the Crown:

- a) be in contempt of court;
- b) be contrary to an order or direction by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- c) infringe the privileges of the Parliament of the Commonwealth or a State, or of a House of such a Parliament of the Legislative Assembly of the Northern Territory or of Norfolk Island.

During the course of considering your request ASADA consulted with the Senate Committee in an attempt to determine whether or not the release of the identified document would infringe the privileges of the Parliament of the Commonwealth. ASADA was informed that neither the Senate Committee nor the Senate had consented to the release of the document. As such, release of the document without these permissions would likely be considered contempt of parliament.

Accordingly, the document is exempt in full under section 46(c) of the FOI Act, because its release would infringe the privileges of the Parliament of the Commonwealth. We note that section 46 of the FOI Act is not a conditional exemption and as a result, there is no public interest test or consideration to be applied.

Document 2

Document 2 has been released to you in full.

Your review rights

If you are dissatisfied with my decision, you may apply for an Information Commissioner review of the decision.

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact the following officer:

Alana Richards

Lawyer

legal@asada.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Lind'.

Judith Lind

Acting Chief Executive Officer



ANNEXURE A

FOI 17-6 – Nelson – Reasoned Decision

<u>Date</u>	<u>Doc No.</u>	<u>Pages</u>	<u>Full Name</u>	<u>Decision on access</u>	<u>Exemption(s)</u>
15/8/16	1	65	CEO correspondence to Senate Committee Chair	Exempt in full	S46(c)
19/10/16	2	1	Senate Committee Chair correspondence to CEO	Release in full	

FREEDOM OF INFORMATION ACT 1982 - SECT 46

Documents disclosure of which would be contempt of Parliament or contempt of court.

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown:

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory.