



Mr Richard Smith

By email: foi+request-3261-33f970bc@righttoknow.org.au

Dear Mr Smith

Notice of internal review decision

I refer to your internal review application of 19 May 2017 regarding Mr Wayne Terpstra's decision of 20 April 2017 on your request for access under the *Freedom of Information Act 1982 (FOI Act)* to:

- 'a) Documents relating to the Commonwealth Department of Agriculture's consideration and decision to apply for ongoing access to Telecommunications Data as per the TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979;*
- b) The date of each Application made by Commonwealth Department of Agriculture for access to Telecommunications Data under the TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979;*
- c) Documents relating to how Commonwealth Department of Agriculture deals with the privacy of data obtained through access to ongoing access to Telecommunications Data as per TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979, including how the data received is obtained, assessed, stored and ultimately destroyed;*
- d) The number of documents containing data obtained by the Commonwealth Department of Agriculture through its ongoing access to Telecommunication Data; and*
- e) The number of documents containing data obtained by the Commonwealth Department of Agriculture through its ongoing access to Telecommunication Data that Council has determined are not likely to be required for a permitted purpose and therefore has destroyed, for the period of time from since the commencement of ongoing access to the data was granted until 17th March 2017.*

I am authorised to make internal review decisions under the FOI Act and have undertaken an internal review. In light of the new information you have provided in your internal review request about the documents you seek, I have decided to vary the decision to grant access to three documents relevant to your request.

The reasons for my decision are at **Attachment A**.

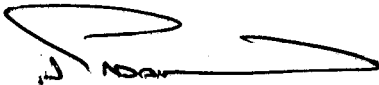
Rights of review

You may apply to the Office of the Australian Information Commissioner (**OAIC**) to review this decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contact details

Should you wish to discuss any issues arising from this letter, please contact Ms Charine Bennett on 02 6272 5505 or email foi@agriculture.gov.au.

Yours sincerely



Nico Padovan
First Assistant Secretary
Service Delivery Division

19 June 2017

FOI Request 2016/17-59 - Reasons for internal review decision on access

In making my decision, I have considered:

- your original request
- the department's request consultation notice and your response
- the original decision
- your internal review request
- decisions of other agencies you referred to as having satisfactorily interpreted your request in your internal review request
- relevant departmental documents
- advice from the relevant business area of the department
- relevant provisions of the *Freedom of Information Act 1982* (FOI Act), and
- the FOI Guidelines issued by the Australian Information Commissioner.

Original refusal decision

I have considered Mr Terpstra's decision refusing you access under s 24(1) of the FOI Act following the request consultation process. Your response to the request consultation process did not address the areas for which clarification about the requested documents was sought. I therefore consider that Mr Terpstra's decision was reasonably open to him to make.

While an internal review is a merit review rather than a process review, I consider the department's engagement with you about the scope of your request was consistent with the requirements of the FOI Act.

Consideration of further information

However, as is appropriate in a merit review process, I have taken into account the further information provided in your internal review application. In particular I considered responses to your requests to the Clean Energy Regulator and Australia Post, which you have indicated addressed the scope of documents you sought. Based on this further information, I have decided to vary the decision to provide you access to documents that I understand cover the material you are seeking to obtain.

I have identified three documents for release with my internal review decision. I have decided that the documents are appropriate for release subject to the deletion of irrelevant information. I enclose a copy of the documents with this information redacted. I consider these documents meet points a) and b) of your original request. These documents are listed in the schedule below.

The department's access to telecommunications data ended in October 2015 and has not been restored. As such the department does not have 'ongoing access' to telecommunications data, as specified in points c)-e) of your request, and as this is the case there are no documents that meet those points.

While it is not in scope of your request, for reports detailing the supply of telecommunications data to departments, including this department, prior to 2015, you can refer to the Attorney General's Department website at the following link:
<https://www.ag.gov.au/NationalSecurity/TelecommunicationsSurveillance/Pages/default.aspx>

Schedule of documents

Doc no.	Date	Description	Decision	Exempt/irrelevant material
1	05/06/15	Letter - Signed response to Assistant Secretary Harmer re- Enforcement Agency Status	Release	Partial deletions made under s 22
2	10/06/16	Letter - Signed response to Katherine Jones re- Enforcement Agency Status Under the Telecommunications Act 1979	Release	Partial deletions made under s 22
3	02/07/15	Email - FW Applications for ongoing access to telecommunications data - Department of Agriculture	Release	Partial deletions made under s 22

Irrelevant material

Section 22(1)(a)(ii) - material that is irrelevant to the scope of the request.

If a document contains material which may reasonably be regarded as irrelevant to the request, that material may be deleted from the document before access is granted under s 22 of the FOI Act. In my view, some information in the documents falls outside the scope of your request and I have decided to delete that information.

I have decided to give access to copies of the documents edited under s 22 of the FOI Act to remove irrelevant material. Some of the s 22 redactions include names of staff members below SES level and direct contact details of staff. From the wording of your request I do not understand that you require this information.

Some of the s 22 redactions made in the documents relate to specific investigations undertaken by the department into criminal matters. This material is provided in the documents as an example of the types of matters in which access to telecommunications data would be of benefit to an investigation. Even without the information related to specific investigations, the documents still explain the reasons that the department has requested access to telecommunications data. In my view the documents address your request even without examples of specific criminal investigations.

I have had mind to the other requests you refer to in your internal review application, in particular Australia Post's response to your request, and their re-release of equivalent documents in which information about investigations has been exempted. As you advised in your internal review that you were satisfied with the outcome of this request I understand that similar details in departmental documents can reasonably be regarded as irrelevant to the request.

However, if you do consider your request covers this material, I consider that much if not all of the material indicated in the documents would be exempt under the FOI Act. In particular s 47E, which may exempt from disclosure material that could prejudice or have a substantial adverse effect on certain agency operations, as well as s 37, documents affecting law enforcement and protection of public safety. I consider the personal information would be exempt under s 47F to protect personal privacy.