



Mr James Smith

Email: [foi+request-3344-e2e41e33@righttoknow.org.au](mailto:foi+request-3344-e2e41e33@righttoknow.org.au)

Dear Mr Smith

**Freedom of Information Request No. 170402**  
**Decision on Access**

I refer to your request of 4 April 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:

- [Item 1] *All documents sent to all employees which explain what information about them was passed onto the ballot provider for each ballot.*
- [Item 2] *Any documents sent to the relevant decision maker(s) who approved the use of the data that was used in the ballots.*
- [Item 3] *Any documents which explain the rational for obtaining breakdowns of votes*
- [Item 4] *Any documents which mention benefits to the department or to the bargaining process in obtaining a breakdown of votes.*
- [Item 5] *Any documents between the departmental bargaining team and the departmental Executive which discuss breakdowns of votes and suggest how that information should be used or otherwise taken into consideration by the department.*
- [Item 6] *Any documents from the APSC that mention what information about employees can or should be used in ballots.*

**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 two documents relevant to the scope of your request.

I have decided to:

- **grant access** to Document 1, relevant to Item 3, in part, as it contains material that I consider irrelevant to the request pursuant to section 22 of the FOI Act; and
- **refuse access** to Document 2, relevant to Item 4, as it consists of material that I consider exempt pursuant to section 47G(1)(a) (**sensitive business information**) of the FOI Act and material irrelevant to the request pursuant to section 22 of the FOI Act.

- **refuse access** to Items 1, 2, 5 and 6 under section 24A(1)(b)(ii) of the FOI Act, as no documents exist.

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 document is 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;
- third party responses to third party consultation; 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 11 April 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, Documents 1 and 2 contained material that did not relate to employee data provided to the ballot agent or a breakdown of employee votes for the Department's Enterprise Agreement ballot. I have deleted this material pursuant to section 22 of the FOI Act, as it is irrelevant to the scope of the request.

#### **Items 1, 2, 5 and 6 refused under section 24A(1)(b)(ii)**

##### *Documents do not exist*

Section 24A(1)(b)(ii) of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable searches have been taken to find the document and the Department is satisfied that it does not exist.

Items 1, 2, 5 and 6 of your request seek documents as described above.

To locate these documents the Department conducted exhaustive searches of their email accounts in addition to searches of our electronic records. As a result of these searches, the Department was unable to locate any documents that fell within the scope of Items 1, 2, 5 or 6 of your request.

Specifically, Item 5 seeks *“any documents between the departmental bargaining team and the departmental Executive which discuss breakdowns of votes and suggest how that information should be used or otherwise taken into consideration by the department.”* However, the Department received the voting breakdown for the 2016 Enterprise Agreement ballot after it had closed. As this ballot resulted in a ‘yes’ vote the voting breakdown was not provided to the Executive, nor was it used to inform any other decision made or negotiation conducted by the Department.

I am satisfied that all reasonable searches have been undertaken to locate the documents sought by to Items 1, 2, 5 and 6 and that they do not exist. I therefore refuse access to these Items under section 24A(1)(b)(ii) of the FOI Act.

### **Material exempted under section 47G(1)(a)**

#### *Sensitive business information*

Section 47G(1)(a) of the FOI Act relevantly provides that where the disclosure of a document would, or could reasonably be expected to unreasonably affect a person or business in respect of their lawful business affairs, 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.

#### Business information

Document 2 is a quote for ballot services given to the Department by its ballot provider. The document contains details of services and pricing structures offered by the ballot provider (**sensitive business information**) which is clearly relevant to the business, commercial and financial affairs of that company and consistent with the interpretation of business affairs as ‘the totality of the money making affairs of an organisation...’ in *Re Mangan and The Treasury [2005] AATA 898*. I am minded that describing this information in any further detail would reveal the sensitive nature of that information. However, I am satisfied that this information is “business information” for the purposes of the FOI Act.

#### Unreasonably affect the business affairs of the organisation

I am satisfied that the disclosure of the sensitive business information in Document 2 would have an adverse effect on the lawful business affairs of the ballot provider. I have given regard to the ballot provider’s submission that it would be unreasonable to release this information as it would reveal services offered by a private company that are not publicly advertised and that disclosure could result in public criticism, affecting their ability to attract future clients.

I am therefore of the view that the sensitive business information in Document 2 is conditionally exempt. I will now consider whether access to it would be contrary to the public interest.

#### Contrary to the public interest

To determine whether access to the conditionally exempt sensitive business information would be contrary to the public interest, I must consider those public interest factors favouring access to the 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 sensitive business 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 1B(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 sensitive business information in Document 2:

- (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 business 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 find that access to the sensitive business information contained in Document 2:

- (h) could reasonably be expected to prejudice an agency's ability to obtain similar information in the future*
- (k) could reasonably be expected to harm the interests of an individual or group of individuals*

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

I have therefore decided to withhold access to the conditionally exempt sensitive business information in Document 2 pursuant to section 47G(1)(a) 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](mailto:foi@environment.gov.au).

Yours sincerely



David Williams  
Assistant Secretary  
Heritage Branch

S June 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 170402 Schedule of Documents

No	Description	Decision
1	<b>Email correspondence</b> 25 August 2016 Subject: Info we need to provide to Cirrena	<i>Release in part</i> Section 22 - personal information of government officers, material irrelevant to scope.
2	<b>Quote from ballot provider</b> 27 April 2016 Department of the Environment Proposal – Version 2	<i>Exempt in full</i> Section 22 - personal information of government officers, material irrelevant to scope.  Section 47G(1)(a) – sensitive business information



## 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](mailto: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](mailto:enquiries@oaic.gov.au)

