



Australian Government

Department of Finance and Deregulation

Reference: FOI 13/05
Contact: Jill Clark
Telephone: (02) 6215 1783
e-mail: FOI@finance.gov.au

Jay Tilley

By Email: foi+request-39-d181ef7d@righttoknow.org.au

Dear Jay Tilley

Freedom of Information Request – FOI 13/05

I refer to your email dated 8 January 2013 to the Department of Finance and Deregulation (Finance) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

...any reports prepared by or for the Department since 2007 in relation to establishing Australia Post as a banking entity (as opposed to a banking agent).

The purpose of this letter is to provide you with notice of my decision under the FOI Act to your request.

Authorised decision-maker

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

Decision

I have decided to release one document in full, with material excluded by the FOI Act or irrelevant to your request redacted from the document. The document is a draft internal working document, prepared by departmental officers in July 2009, and refers to the steps that would be required for the Australian Postal Corporation to undertake banking services as a principal.

A copy of the redacted document is provided with this decision.

Reasons for Decision

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Section 7 - Exemption of certain persons and bodies

Section 7(2) (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the FOI Act in relation to particular types of documents. The list includes the Australian Postal Corporation in respect to documents relating to their commercial activities. Following consultation with the Australian Postal Corporation I find that parts of the document which relate to these activities are exempt from the operation of the FOI Act by virtue of section 7(3)(b) of the FOI Act. As such these parts of the document have not been considered in this decision.

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act allows for the deletion of exempt or irrelevant matter from a document that may allow for an edited form of the document to be released. I have decided that an edited copy of the document can be released to you under this category. Accordingly, I have decided to provide you with access to one (1) document with the material excluded by the FOI Act or irrelevant information redacted.

Copies of section 7 and 22 are at Attachment A.

Review and Appeal Rights

You are entitled to request an internal review of my decision. The process for review and appeal rights is set out at Attachment B.

Publication

The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act; and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log (www.finance.gov.au) as soon as possible after they are released to you, usually 1 – 2 working days.

If you have any questions, please do not hesitate to contact Ms Jill Clark, FOI Coordinator, on the details indicated above.

Yours sincerely



Stacie Hall
Assistant Secretary
Government Business Advice Branch

7 March 2013

FREEDOM OF INFORMATION ACT 1982 - SECTION 7

7 Exemption of certain persons and bodies

- (1) The bodies specified in Division 1 of Part I of Schedule 2, and a person holding and performing the duties of an office specified in that Division, are to be deemed not to be prescribed authorities for the purposes of this Act.
- (1A) For the purposes of the definition of *agency*, a part of the Department of Defence specified in Division 2 of Part I of Schedule 2:
- (a) is taken not to be included in the Department of Defence (or in any other Department) for the purposes of this Act; and
 - (b) to avoid doubt, is not an agency in its own right for the purposes of this Act.
- (2) The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.
- (2AA) A body corporate established by or under an Act specified in Part III of Schedule 2 is exempt from the operation of this Act in relation to documents in respect of the commercial activities of the body corporate.
- (2A) An agency is exempt from the operation of this Act in relation to the following documents:
- (a) a document (an *intelligence agency document*) that has originated with, or has been received from, any of the following:
 - (i) the Australian Secret Intelligence Service;
 - (ii) the Australian Security Intelligence Organisation;
 - (iii) the Inspector-General of Intelligence and Security;
 - (iv) the Office of National Assessments;
 - (v) the Defence Imagery and Geospatial Organisation;
 - (vi) the Defence Intelligence Organisation;
 - (vii) the Defence Signals Directorate;
 - (b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.
- (2B) A Minister is exempt from the operation of this Act in relation to the following documents:
- (a) an intelligence agency document;
 - (b) a document that contains a summary of, or an extract or information from, an intelligence agency document, to the extent that it contains such a summary, extract or information.
- (2C) An agency is exempt from the operation of this Act in relation to the following documents:
- (a) a document (a *defence intelligence document*) that has originated with, or has been received from, the Department of Defence and that is in respect of:
 - (i) the collection, reporting or analysis of operational intelligence; or
 - (ii) special access programs, under which a foreign government provides restricted access to technologies;
 - (b) a document that contains a summary of, or an extract or information from, a defence intelligence document, to the extent that it contains such a summary, extract or information.
- (2D) A Minister is exempt from the operation of this Act in relation to the following documents:
- (a) a defence intelligence document;
 - (b) a document that contains a summary of, or an extract or information from, a defence intelligence document, to the extent that it contains such a summary, extract or information.

ATTACHMENT A

- (3) In subsection (2AA) and Part II of Schedule 2, *commercial activities* (except when used in relation to NBN Co) means:
- (a) activities carried on by an agency on a commercial basis in competition with persons other than governments or authorities of governments; or
 - (b) activities, carried on by an agency, that may reasonably be expected in the foreseeable future to be carried on by the agency on a commercial basis in competition with persons other than governments or authorities of governments.
- (3A) In Part II of Schedule 2, *commercial activities*, when used in relation to NBN Co, means:
- (a) activities carried on by NBN Co on a commercial basis; or
 - (b) activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.
- (4) In subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.

Schedule 2

Section 7

Part II—Agencies exempt in respect of particular documents

Division 1

Albury-Wodonga Development Corporation, in relation to documents in respect of its commercial activities

Attorney-General's Department, in relation to:

- (a) documents in respect of commercial activities it undertakes; and
- (b) documents in respect of commercial activities undertaken by the Australian Government Solicitor; and
- (c) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (d) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Australian Communications and Media Authority, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Australian Broadcasting Corporation, in relation to its program material and its datacasting content

Australian Postal Corporation, in relation to documents in respect of its commercial activities

Australian Trade Commission, in relation to documents concerning the carrying out, in whole or in part, of overseas development projects

Australian Transaction Reports and Analysis Centre, in relation to documents concerning information communicated to it under section 16 of the *Financial Transaction Reports Act 1988* or section 41 or 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

Classification Board, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Classification Review Board, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

- Comcare, in relation to documents in respect of its commercial activities
- Commonwealth Scientific and Industrial Research Organisation, in relation to documents in respect of its commercial activities
- Department of Defence, in relation to documents in respect of:
- (a) the collection, reporting or analysis of operational intelligence; or
 - (b) special access programs, under which a foreign government provides restricted access to technologies.
- Department of the Treasury in relation to documents in respect of activities of the Australian Loan Council and in respect of the commercial activities of the Royal Australian Mint
- Export Finance and Insurance Corporation, in relation to documents concerning anything done by it under Part 4 or 5 of the *Export Finance and Insurance Corporation Act 1991*
- Human Services Department, in relation to documents in respect of commercial activities relating to the functions of the Chief Executive Medicare
- Indigenous Business Australia, in relation to documents in respect of its commercial activities
- National Health and Medical Research Council, in relation to documents in the possession of members of the Council of the National Health and Medical Research Council who are not persons appointed or engaged under the *Public Service Act 1999*
- NBN Co, in relation to documents in respect of its commercial activities
- Reserve Bank of Australia, in relation to documents in respect of its banking operations (including individual open market operations and foreign exchange dealings) and in respect of exchange control matters
- Special Broadcasting Service Corporation, in relation to its program material and its datacasting content

Division 2

- Australian Statistician, in relation to documents containing information collected under the *Census and Statistics Act 1905*

FREEDOM OF INFORMATION ACT 1982 - SECTION 22

Access to edited copies with exempt or irrelevant matter deleted

Scope

1. This section applies if:
 - a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

2. The agency or Minister must:
 - a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - b) give the applicant access to the edited copy.

Notice to applicant

3. The agency or Minister must give the applicant notice in writing:
 - a) that the edited copy has been prepared; and
 - b) of the grounds for the deletions; and
 - c) if any matter deleted is exempt matter--that the matter deleted is exempt matter because of a specified provision of this Act.

Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.



Australian Government

Department of Finance and Deregulation

Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance and Deregulation (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this document.

Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

Do I have to pay?

No. Review by the IC is currently free.

How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:

Post: Office of the Australian Information
Commissioner
GPO Box 2999
CANBERRA ACT 2601
Email: enquiries@oaic.gov.au
Fax: 02 9284 9666
In person: Level 3
175 Pitt Street
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website (www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Making a complaint

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

When can I go to the Administrative Appeals Tribunal (AAT)?

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

Investigation by the Ombudsman

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the

complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

Post: Commonwealth Ombudsman
PO Box 442
CANBERRA ACT 2601
Phone: 02 6276 0111
1300 362 072

Finance FOI contact details

FOI Coordinator
Legal Services Branch
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
PARKES ACT 2600
Phone: 02 6215 1783
Email: foi@finance.gov.au
Website: www.finance.gov.au/foi/foi.html