



Senator the Hon Fiona Nash
 Minister for Regional Development
 Minister for Local Government and Territories
 Minister for Regional Communications
 Deputy Leader of The Nationals

FOI

Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reasons for decision of Nathan Smyth, Chief of Staff, Minister for Local Government and Territories

Applicant: Maddison Connaughton
Decision date: October 2017
FOI reference number: MO18-09
Documents: Correspondence between Senator Nash and NCA

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Summary

1. I have made a decision to release the documents subject to your request in full.

Authority to make this decision

2. I, Nathan Smyth, Chief of Staff, am an officer authorised by the Minister for Local Government and Territories to make decisions about access to documents in the possession of the Minister's Office in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 13 October 2017, you made a request for access to documents in the possession of the Minister's Office. Your request sought access to:

Correspondence by Minister for Local Government and Territories Fiona Nash related to the pill testing pilot program that was to run at Canberra's Spilt Milk festival. Specifically,

- *All correspondence (including emails, written letters) sent and received between Senator Nash and the National Capital Authority between 28 September, 2017 and 12 October, 2017 related to Spilt Milk or the pill testing pilot*
- *Correspondence between Senator Nash and the ACT Shadow Attorney-General Jeremy Hanson related to Spilt Milk or the pill testing pilot sent after 28 September, 2017*
- *All correspondence sent and received between Senator Nash and Minister for Health Greg Hunt sent and received between 28 September, 2017 and 12 October, 2017 related to Spilt Milk or the pill testing pilot.*

Documents subject to this request

4. The Minister's Office has undertaken a search of its records and has identified two documents that fall within the scope of your request. Documents are listed in the schedule of documents at schedule 1.

Decision

5. I have made a decision to release the documents subject to your request in full.

Access to documents

6. The documents relevant to your request are publically available at the following link:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publicatio ns%2Ftabledpapers%2F4d8c775f-8bce-48b1-9f37-92f767b94d51%22>

Your rights of review

7. If you disagree with your FOI decision, you can ask for the decision to be reviewed by the Office of the Australian Information Commissioner (OAIC).

Information Commissioner Review

8. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
9. You can ask the OAIC to review the Minister's decision.
10. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
11. You must apply in writing and you can lodge your application in one of the following ways:

Online: <www.oaic.gov.au>

Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001

Facsimile: (02) 9284 9666

Email: <enquiries@oaic.gov.au>

In person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>.

Contacts

12. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.



Nathan Smyth
Chief of Staff
24 October 2017

Schedule of documents

Applicant: Maddison Connaughton

Decision date: October 2017

FOI reference number: MO18-09

Documents: Correspondence between Senator Nash and NCA

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
1	28/09/17	Mr Jeremy Hanson	Senator Nash, Minster Hunt	Letter regarding free 'pill testing' of illicit drugs	Release in full	Nil
2	16/10/17	Minister Nash	Mr Jeremy Hanson	Response to letter of 28 September 2017	Release in full	Nil

Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

- Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
- (a) section 12 (documents otherwise available);
 - (b) section 13 (documents in national institutions);
 - (c) section 15A (personnel records);
 - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.