



Australian Government

Comcare

10 October 2018

Our Ref: 2018/10486

Mr Mike Tremblay

Email: [foi+request-4509-bce25a5b@righttoknow.org.au](mailto:foi+request-4509-bce25a5b@righttoknow.org.au)

Dear Mr Tremblay,

**Internal review of FOI request 2018/4139**

I refer to your correspondence of 7 September 2018, requesting an internal review of Comcare's decision dated 21 June 2018 (the primary decision), following your request seeking access under the *Freedom of Information Act 1982* (the FOI Act) to:

*all records including but not limited to:*

- *documents,*
- *diaries,*
- *electronic communications,*
- *fax transmissions,*
- *transactions,*
- *information including that generated by information systems,*
- *incident reports,*
- *notes made from any telephone conversations*

*that relate to the accident that exposed a worker at ANSTO Health, Lucas Heights, on 22 August 2017 to radioactive Molybdenum-99. These records should include all communications from ANSTO to Comcare regarding the incident and Comcare's regulatory response. Also requested are all records that relate to communications made under the Memorandum of Understanding between Comcare and The Australian Radiation Protection and Nuclear Safety Agency.*

**Submissions**

You have noted in your application for internal review that this review request is in pursuit of the second tranche of documents that had been approved but had, due to apparent technical issues, not been provided.

## **Authority**

I am authorised under section 54C of the FOI Act to make decisions on access requests and this notice sets out the decision on your request.

I have reviewed the decision to and have made a fresh decision on release. I have decided to affirm the primary decision and

- grant you full access to four documents
- grant you part access to 44 documents with some of the content removed and
- refuse access to three documents

The reasons for my decision are detailed at Attachment A.

## **Review rights**

If you disagree with any part of the decision you can ask for an external review by the Office of the Australian Information Commissioner. See Attachment B for more information about how arrange a review.

## **Further assistance**

Should you require clarification of any matter discussed in this letter, please contact me by email to [foi@comcare.gov.au](mailto:foi@comcare.gov.au) or by telephone 1300 366 979.

Yours sincerely,

Assistant Director, FOI & Privacy

## REASONS FOR DECISION

My reasons for affirming the primary decision are discussed below.

### Information Considered

In reaching my decision I have considered:

- your original request dated 17 April 2018
- your internal review request dated 20 September 2018
- consultations with departmental officers about:
  - the nature of the documents;
  - the department's operating environment and functions;
- correspondence between Comcare and Right to Know
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**);
- the FOI Act.

### Reasons for my decisions

I am authorised to make decisions under section 54C of the FOI Act and have decided to affirm the primary decision and rely on the reasons presented in the decision letter of 21 June 2018 in relation to the exemptions.

### Response to your submission

I have spoken to the primary decision maker and reviewed the attempts made to deliver the documents to you.

Comcare's attempts in delivering documents in relation to your FOI request:

Date	Event
21 June 2018	<p>The decision letter was sent to you via the Right To Know website. As the documents are too large to send via email, Comcare requested a personal email or a physical address to send them to.</p> <p>Comcare considered the option to send a link to our secure drop box to the Right To Know email, however this would allow any member of the public to use the link to download the documents resulting in you, the applicant, being denied access. This option was not considered further and I agree with this decision.</p>

4 July 2018	You responded and advised that Comcare could upload the documents directly to the website.
6 July 2018	<p>Comcare emailed the 'Investigation' documents as this file was smaller.</p> <p>Comcare then created a log in for the Right To Know website and attempted to upload the 'Verification Investigation' documents.</p> <p>The Right To Know server advised that the file was too large to upload even though the file is 38.1Mb and the maximum upload is 50Mb.</p> <p>Comcare advised you of this and asked how you would like to proceed.</p>
11 August 2018	You advised to split the documents into smaller files and try to upload them.
13 August 2018	<p>Comcare split the file remaining file into three parts and tried to upload part 1 which is just 3.75Mb. A further error message was received from the Right To Know server.</p> <p>Comcare sent an email to Right To Know Support stating that no matter what size file upload, an error message stating that the file is too large was received.</p>
15 August 2018	Ben from Right To Know asked if Comcare could send him the file to test. He was sent Part 1 of the verification investigation file.
24 August 2018	<p>James from Right To Know emailed to say he had updated their server and to try to upload the files again.</p> <p>Comcare tried to upload the 3.75Mb file and the Right To Know server still responded with an error message that the document was too large.</p> <p>Comcare sent an email back to James including a screen shot of the error and asked if it could send the documents directly to him through Comcare's secure drop box so that Right to Know could upload them.</p> <p>No further communication has been received from Right to Know.</p>

I am satisfied that Comcare has taken reasonable steps to assist you to obtain your documents through the Right to Know website.

Please note that you have the option to provide either an email or postal address for Comcare to provide you with the documents directly.

## INFORMATION ON RIGHTS OF REVIEW

### *FREEDOM OF INFORMATION ACT 1982*

If you are dissatisfied with this decision, your rights of review are as follows:

#### **Review by the Office of the Australian Information Commissioner**

Under section 54L of the FOI Act, you may seek review of this decision by the Information Commissioner.

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, SYDNEY NSW 2001  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at [www.oaic.gov.au](http://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.

#### **Complaints to the Information Commissioner or the Commonwealth Ombudsman**

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by Comcare in relation to your request. The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)  
Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Your enquiries to the Australian Information Commissioner can be directed to:

Phone: 1300 363 992 (local call charge)  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

No specific form is required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify Comcare as the relevant agency.