



27 June 2018

Sun Shine

By email: [foi+request-4593-c089593d@righttoknow.org.au](mailto:foi+request-4593-c089593d@righttoknow.org.au)

Dear Sun Shine,

### Your Freedom of Information Request

I refer to your request of 22 May 2018 under the *Freedom of Information Act* 1982 (the FOI Act) seeking access to a copy of the document:

*the written notice (improvement notice) that required the holder of the licence to: (a) remedy a contravention; or (b) prevent a likely contravention from occurring; or (c) remedy matters or activities causing the contravention or likely contravention; or (d) cease an activity causing the contravention or likely contravention.*

The improvement notice referred to is identified by you as being an Improvement Notice issued by the CEO of ARPANSA in 2017 under section 80A of the Act.

I am an officer authorised under section 23 of the For FOI Act to make decisions with respect to applications for access to documents under the FOI Act and this letter sets out my decision on your request.

### Decision

I have identified one document relevant to your request and have decided to release the document to you in part.

My reasons for making this decision are set out in Attachment A to this letter. At Attachment B is a schedule setting out each identified document and detailing my decision in relation to each document.

I have enclosed extracts of the provisions of the FOI Act relevant to your request and my decision at Attachment C to this letter.

You will note that deletions have been made in the document attached, in accordance with section 22 of the FOI Act. Some material contained in the document has been edited from the document on the basis that it is irrelevant to the scope of your request. Further material has been deleted on the basis that disclosure of the information could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency within the terms of section 47E(d) and, as it would on balance be contrary to the public interest to disclose that, it is exempt under section 31B.

## **Review Rights**

You are entitled to seek review of this decision. Your rights in this regard are set out at Attachment D to this letter.

You may also complain to the Commonwealth Ombudsman about the way your request has been handled and Attachment D also sets out your rights of complaint and how to exercise them.

## **Publication of information in accessed documents.**

ARPANSA must publish information that has been released in response to each freedom of information access request, subject to certain exceptions, in what is known as a "disclosure log".

The disclosure log requirement does not apply to personal information about any person if it would be unreasonable to publish the information or to information about the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable. ARPANSA is not required to consult you on any decision to publish information that is released to you and the decision to publish information is not subject to internal review by ARPANSA or the Australian Information Commissioner. Any person can however, make a complaint to the Australian Information Commissioner about how an agency handles an FOI request.

I advise you that the document that will be placed on the ARPANSA disclosure log will be the same as the document released to you.

ARPANSA's disclosure log can be found at <http://www.arpansa.gov.au/AboutUs/disclosure.cfm>.

## **Contacts**

If you require clarification of any of the matters set out in this letter please contact Martin Reynolds on 03 9433 2349 or [foi@arpansa.gov.au](mailto:foi@arpansa.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Martin Reynolds', written over a horizontal line.

Martin Reynolds  
General Counsel



## ATTACHMENT A – REASONS FOR DECISION

### Material taken into account

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

- The terms of your request;
- The content of the documents to which you sought access;
- Advice from ARPANSA officers with responsibility for matters relating to the documents to which you sought access;
- The relevant provisions of the FOI Act;
- ARPANSA’s guidance material on the FOI Act, and
- Guidelines on FOI, available on the Office of the Australian Information Commissioner website.

### Findings of fact and reasons for decision

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that document or part of document are set out below.

#### Section 22 deletion of exempt matter or irrelevant material

Section 22 of the Act allows for the deletion of information which is either exempt or which is irrelevant to the scope of the request. I have concluded that the name of a CSIRO officer included on the form in the field described as “Licence Holder” is irrelevant to the scope of your request as the officer is merely the person to whom the Notice was handed and is not, in fact, the licence holder. The licence holder is still identified in the Notice and this material has not been exempted.

I have also found that a picture of the signature of the ARPANSA Inspector who issued the Notice is irrelevant. The Inspector’s name is included on the Notice and has not been exempted.

#### Section 22(1)(a)(i) – material which is exempt

Where a decision is made to refuse access to a document on the ground that it is an exempt document, section 22 allows an agency to make an edited copy of the document with the exempt material deleted. You have been provided with such edited copies of documents. The schedule identifies the relevant section of the Act under which the exempt material has been deleted. My reasons for claiming the particular exemption are set out below.

#### Section 47E(d) - certain operations of agencies

Section 47E(d) conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

In considering this issue, I have taken into account the fact that release of documents is unconditional and no restrictions can be placed on the subsequent use of the documents. This is sometimes referred to as release to the “world-at-large”.

The subject matter of the Improvement Notice is radioactive sources at the Clayton campus of the CSIRO and some material contained in the document reveals the exact physical location of sources within that campus. Some of these radioactive sources could be of interest for malicious use and advertising the whereabouts of such sources with more specificity than is currently available to the public could reasonably be expected to adversely affect the security procedures required and the safety of the site.

#### *Public interest*

Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A). In considering this issue, I have taken into account the following public interest factors in favour of and against disclosure:

#### *Factors in favour of disclosure*

Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

- 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; and
- d. allow a person to access his or her own personal information.

I have also taken into consideration any guidelines issued by the Australian Information Commissioner issued under section 11B(5) of the FOI Act.

#### *Factors against disclosure*

- a. the interest in preserving the efficient and proper functioning of government;
- b. the interest in preserving the security of secure Commonwealth sites;
- c. the interest in minimising the risks to the safety of the public from persons with malicious intent from accessing dangerous materials; and
- d. that the information is not available from public sources.

In my view, in relation to the document, the factors against disclosure outweigh the factors in favour of disclosure as disclosure of the conditionally exempt material would not promote the objectives of the FOI Act, would add nothing to any ongoing debate of public importance, and would make no contribution to governmental accountability. Whereas the public interest in protecting the security and safety of Commonwealth staff, in particular, and, more generally, the Australian people carries great weight.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release the document in full. Parts of the document are therefore exempt under section 47E(d).



**ATTACHMENT B – SCHEDULE OF RELEVANT DOCUMENTS**

Doc No.	Document Title	Pages	Released	Section
1	Improvement Notice dated 12 April 2017	1	In Part	s22, s47E



## ATTACHMENT C – RELEVANT FOI ACT PROVISIONS

### 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).

## 11C Publication of information in accessed documents

### *Scope*

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
  - (a) personal information about any person, if it would be unreasonable to publish the information;
  - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
  - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
  - (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

### *Publication*

- (3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
  - (a) making the information available for downloading from the website; or
  - (b) publishing on the website a link to another website, from which the information can be downloaded; or
  - (c) publishing on the website other details of how the information may be obtained.

## 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.
- (4) 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.

### **31B Exempt documents for the purposes of this Part**

A document is *exempt* for the purposes of this Part if:

- a. it is an exempt document under Division 2; or
- b. it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note 1: A document is an *exempt document* for the purposes of this Act (see subsection 4(1) if:

- a. it is exempt under this section; or
- b. it is exempt because of section 7 (exemption of certain persons and bodies); or
- c. it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

Note 2: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).





**ATTACHMENT D INTERNAL REVIEW OF DECISION BY ARPANSA**

You have the right to apply for an internal review of this decision in accordance with Part VI of the *Freedom of Information Act 1982* (FOI Act). If you make an application for review, the CEO of ARPANSA will appoint an officer of ARPANSA to conduct a review and make a completely fresh decision on the merits of the case.

If you wish to exercise this review right, you must apply in writing for a review of the decision within 30 days of receipt of this letter. You do not have to pay any fees or proceeding charges for internal the review. No particular form is required to apply for review although it is desirable to set out in the application the grounds on which you consider that the decision should be changed.

The application for review of the decision should be sent to [foi@arpansa.gov.au](mailto:foi@arpansa.gov.au) or:  
FOI & Privacy Officer  
ARPANSA  
619 Lower Plenty Road  
YALLAMBIE VIC 3085

If you make an application for internal review and a decision is not made by us within 30 days of receiving the application, the original decision will be deemed to be affirmed in accordance with section 54D of the FOI Act and you will be entitled to make an application to the Information Commissioner in accordance with sections 54L and 54M of the FOI Act. Similarly, if you are dissatisfied with ARPANSA’s decision on internal review, you may also apply for review of this decision to the Information Commissioner.

**Review of Decision by the Australian Information Commissioner (AIC)**

You do not have to seek an internal review of the decision directly from ARPANSA. You may wish to seek a review of the decision from the AIC. If so, you must apply in writing and you can lodge your application in a number of ways. More information is available on the AIC’s website at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

**Complaints to the AIC or the Commonwealth Ombudsman**

You may complain to the Commonwealth Ombudsman or the AIC concerning action taken by an agency in the exercise of the powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Ombudsman or the AIC will conduct a completely independent investigation of your complaint.

You may complain to the Ombudsman either orally, in person, on-line or in writing and to the AIC in writing or by completing the on-line form. Relevant addresses are:

Commonwealth Ombudsman GPO Box 442 CANBERRA ACT 2601.  Web: <a href="http://www.ombudsman.gov.au">www.ombudsman.gov.au</a>	The Australian Information Commissioner GPO Box 2999 <b>OR</b> GPO Box 5218 Canberra ACT 2601 Sydney NSW 2001  Web: <a href="https://www.oaic.gov.au/freedom-of-information/foi-complaints">https://www.oaic.gov.au/freedom-of-information/foi-complaints</a>
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# Improvement Notice

*Section 80A of the Australian Radiation Protection and Nuclear Safety Act 1998*

**Licence holder:** Irrelevant CSIRO Mineral Resources

**Licence Number:** S0064

**Location:** Clayton, Victoria

**ARPANSA reference number:** R17/03369

**Date of issue:** 12/04/17

- 1. Provision of the Act or Regulations or licence condition/s the inspector reasonably believes the licence holder is not in compliance of or is likely to be not in compliance with, and how (Ref. Paragraphs 80A(3)(b) and (c))**

**Licence Condition 1 - Source Inventory.** The inspector believes that the discovery of one unsealed source that was not recorded on the Source Inventory Workbook (SIW) indicates that there are potentially additional sources that are not recorded on the SIW. CSIRO representatives have verbally indicated to the ARPANSA inspectors that there is at least one additional radioactive source in the s 47E - operations that is not included in the SIW.

**Licence Condition 5 a) - Standards and Codes of Practice.** The observation of chemicals which have the potential to damage the structural integrity of radioactive materials, co-located with radioactive materials, and the presence of neutron emitting radionuclides, co-located with fissile nuclear materials, indicates that the Section 7.1 of the Australian Standard in Laboratories – Ionizing Radiations (1998) (AS2243.4-1998) in relation to storage is not being followed.

- 2. Action in subsection 80A(2) that the licence holder is required to take (may be continued over page)**

1. Undertake a comprehensive inventory check of the material holdings in the s 47E - operations, including chemical, radiological and nuclear materials.
2. Conduct a detailed risk assessment of the materials.
3. Store the materials in accordance with legislated requirements.
4. Enhance the protective security arrangements of the s 47E - operations, as appropriate.
5. Report the findings from actions 2.1 and 2.2 and the steps taken to comply with actions 2.3 and 2.4 to ARPANSA and other relevant competent authorities.

**Date or time by which the Improvement Notice must be complied with:** 30<sup>th</sup> June 2017

**Name of inspector:** Loch Castle

**Inspector's signature:** Irrelevant

**Date signed:** 12APR2017