



Reference: 18-019

Ruth Armstrong

By Email: foi+request-4893-c6c3998a@righttoknow.org.au

Dear Ruth

Decision under the *Freedom of Information Act 1982* (Cth)

I refer to your email of 13 October 2018 in which you requested access to documents under the *Freedom of Information Act 1982* (the FOI Act).

You requested access to:

'All documents relating to the number of workplace inspections and breaches for silica dust from stone cutting in 2017 and 2018 (to end September), (including) the levels of free silica found in breaches over this period... (and) any documents (or an estimate), indicating the total number of people employed in the artificial stone cutting industry over this period'

I am an authorised decision maker under section 23 of the FOI Act and this letter sets out my decision on your request for access.

Summary of decision

Following searches of both electronic and paper documents, I have identified four documents relevant to your request. I have decided to release all of these documents in part. Edits have also been made to some documents to redact material that I consider to be outside the scope of your request for access. A schedule of documents is contained at **Attachment B**.

Relevant Material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to your request
- the FOI Act, and
- guidelines published by the Office of the Australian Information Commissioner.

Please find **enclosed** a copy of the documents I have decided to release to you.

Removal of irrelevant content

I have decided to edit parts of documents 1 and 3 to remove information that is irrelevant to the scope of the request that you have made. This includes deliberations between Safe Work Australia and Commonwealth, state and territory regulators on policy areas and organisational updates unrelated to silica. The edits also included internal Agency dialogue irrelevant to the scope of your request.



In considering the release of edited copies of these documents, I have considered the factors outlined in ss 22(1)(b) to 22(1)(d) of the FOI Act, which are as follows:

- it is possible for the Agency to prepare an edited copy of the document
- the preparation of the edited copy is reasonably practicable, and
- it is not apparent that the applicant would decline access to edited copy.

I have decided it is possible and reasonably practicable for the edited copies of the documents to be prepared, and that those edited copies contain information relevant to your request.

Conditional exemption – section 47B – Commonwealth-State relations

I have decided to exempt parts of documents 1 and 4 on the basis that the conditional exemption in s 47B of the FOI Act applies.

Sections 47B(a) to 47B(b) of the FOI Act conditionally exempts documents where their disclosure:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a state, or
- would divulge information or matter communicated in confidence by or on behalf of the Government of a state or an authority of a state, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth.

Application of the conditional exemption

I have removed information that has been provided to Safe Work Australia from the states and territories in their deliberations at a Government Occupational Hygiene Regulators Meeting. This includes information recorded in the Agency's final minutes and in hand written notes made by employees of Safe Work Australia.

I consider that the disclosure of the information provided at a Government Occupational Hygiene Regulators meeting could reasonably be expected to damage relationships between Commonwealth, state and territory governments. Disclosure in this instance would, or could reasonably be expected to, cause damage to working relations between the Commonwealth and one or more states or territories. This is on the basis that this is information from states and territories that has been provided at heads of government meetings in confidence as part of the policy making process for respirable dust and silica.

Public interest test

I have decided that it would be contrary to the public interest for the information for which s 47B applies to be released. This is on the basis that the public interest factors favouring access are outweighed by the public interest factors not favouring access. Considering the factors favouring access, we note that the release of the information would promote the objects of the FOI act and inform debate on a matter of public importance.

Considering the factors not favouring access, we note that Safe Work Australia is the national policy agency on WHS, with the Commonwealth, state and territory governments responsible for regulating and enforcing WHS laws in their jurisdictions. Preserving the confidence and close working relationship that exists between Safe Work Australia and the Commonwealth, state and territory regulators is essential for the effective performance of



Safe Work Australia's functions and ensures the effective policy and enforcement actions of the jurisdictions.

Conditional exemption – section 47F – Personal privacy

I have decided to exempt parts of documents 1, 2, and 3 on the basis that the conditional exemption in s 47F of the FOI Act applies.

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person). In applying this conditional exemption, in accordance with s 47F(2) of the FOI Act, I have had regard to the following factors:

- (a) the extent to which the information is well known,
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document,
- (c) the availability of the information from publically accessible sources, and
- (d) any other matters that the Agency considers relevant.

Application of the conditional exemption

I have exempted the names of Safe Work Australia employees and their email addresses from release. These include the details of Safe Work Australia employees who are not Senior Executive Service employees and where the personal information is not already publically available.

Details of individuals from outside of the Agency have also been exempted from release. This includes the names and contact details of employees from the state and territory regulators not on the public record, as well as names and contact details of members of the public whose enquiries to the Agency are part of the released documents. Disclosure of this information would be unreasonable and there is no public purpose that would be achieved through the release of this information.

Public interest test

I have decided that it would be contrary to the public interest for access to the personal information outlined above to be given. I note that the work that Safe Work Australia undertakes in respect to information on silica dust is of significant public interest. Despite this, the interest in disclosing these documents in full is outweighed by the interest in protecting the privacy of the employees and individuals mentioned above. I consider that the disclosure of these names would be unreasonable because there would be no public purpose that would be achieved through the release of this information.

Similarly, I have decided that the public interest for access to be given to email addresses and phone numbers that are not already publically available is outweighed by Safe Work Australia's interest in protecting the privacy of the individuals concerned. The release of employee email addresses may also undermine the operation general enquiry program that is part of Safe Work Australia's public engagement processes.

Other Information

Please note Safe Work Australia is not a Work Health and Safety (WHS) regulator and does not conduct investigations. Safe Work Australia therefore has limited information concerning WHS investigations conducted by regulators. If you are interested in information concerning



the number of WHS investigations conducted by a WHS regulator, we recommend that you make a request for information from that regulator. Please note that the Commonwealth FOI Act does not apply to state and territory regulators and you would need to make a request for information under the information access laws that apply in that state or territory.

Review Rights

You are entitled to seek review of this decision. **Attachment A** sets out your rights to apply for review if you are dissatisfied with my decision.

If you have any queries about this notice, please do not hesitate to contact Mark Smith on (02) 6121 5392.

Yours sincerely

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

Amanda Johnston
General Counsel

8 November 2018



Attachment A - Review Rights

If you are dissatisfied with this decision, you have certain rights of review available to you.

Internal Review

Under section 54 of the FOI Act, you may apply for an internal review of the decision. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice, or
- 15 days of you receiving the documents to which you have been granted access.

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review, although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:

FOI Officer
GPO Box 641
CANBERRA ACT 2601

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

Review by the Australian Information Commissioner

Under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website www.oaic.gov.au.

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commission at:

Information Commissioner
GPO Box 2999
Canberra ACT 2601

Administrative Appeals Tribunal Review

If you disagree with the Information Commissioner's decision in your IC review, you can appeal to the Administrative Appeals Tribunal (AAT).

You have 28 days after receiving the IC review decision to apply for AAT review. The AAT will reconsider the agency or minister's decision, and can make a new decision. The Information Commissioner will not be a party to the proceedings.

In normal circumstances, you cannot appeal directly to the AAT for review of a decision made under the FOI Act without first applying for Information Commissioner review. The exception is if the Information Commissioner decides that it would be in the interests of the administration of the FOI Act for the AAT to consider the matter. You also cannot apply for AAT review if the Information Commissioner has decided not to undertake or continue a review.

A fee is required to apply to the AAT, although it can be waived in some circumstances. More information about the AAT review process and applicable fees is available at www.aat.gov.au.

Complaints to Ombudsman or Australian Information Commissioner

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by Safe Work Australia 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

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

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

There is no particular form 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 Safe Work Australia as the relevant agency.

Please note

Pursuant to the OAIC public website, from 1 November 2014 the Commonwealth Ombudsman have been handing complaints about the processing of FOI requests. Therefore any complaints received by the OAIC are currently being referred to the Commonwealth Ombudsman.

This change was implemented after the Australian Government's budget decision to abolish the OAIC and the introduction of the Freedom of Information Amendment (New Arrangements) Bill 2014.