



30 November 2018

Mr Richard Smith
By email: foi+request-4931-bfd6c3fa@righttoknow.org.au

Dear Mr. Smith

Freedom of Information Request

I refer to your request under the *Freedom of Information Act 1982* (the FOI Act) seeking access to:

- a) Documents relating to substantiation of the claim, including any research conducted, that "partial market failure" continues to exist in the private sector through natural market forces and not as a result of the existence and operation of government funded Terrorism Risk (Re) Insurance Pools, similar in operation and function to ARPC; and*
- b) Documents relating to statistics kept or obtained by ARPC of all Declared Terrorist Incidents which occurred in Australia (or against Australian registered vessels & aircraft) for the period 30 June 2003 to 30 June 2018, including location, date, duration and financial impact to Australian interests, both government and private with figures aggregated on an annual basis; and*
- c) Documents relating to statistics of number and value of all claims made to ARPC for the period 30 June 2003 to 30 June 2018, including claims made, claims assessed and paid, and claims rejected, with values aggregated to annual figures; and*
- d) Documents relating to the decision to move the ARPC offices from Canberra to Sydney, including total costs of the move and any cost/benefit analysis of the move as compared to remaining in Canberra.*

Your request was received by ARPC on 02 November 2018 and an acknowledgement letter was emailed to you on 12 November 2018 informing you that a decision was due to be made in relation to this request by 02 December 2018.

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

I have decided that there is no charge for processing your request.

Decision

With reference to part a) of your request, research into potential market failure in the private sector market is conducted by The Treasury every three years and the results are published publicly on the Treasury's website. The document can be located at:

https://static.treasury.gov.au/uploads/sites/1/2017/06/Terrorism_Insurance_Act_Review-2015.pdf

Furthermore, Treasury are currently completing a 2018 triennial review into the Australian Reinsurance Pool Corporation, which again considers the potential market failure in the private market. This report is due to be published by Treasury in the coming months.

With reference to part b) of your request, for the period 30 June 2003 to 30 June 2018 there has been one event declared by the Treasurer as a "Declared Terrorism Incident" in accordance with the Terrorism Insurance Act 2003. This declaration was made through a Media Release by Hon Joe Hockey on 15 January 2015 and is publicly available at: <http://jbh.ministers.treasury.gov.au/media-release/001-2015/>.

With reference to part c) of your request, 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 detailing my decision in relation to the document.

With reference to part d) of your request, 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 detailing my decision in relation to the document.

You will note that deletions have been made in the documents attached, in accordance with section 22 of the FOI Act. The material has been deleted on the basis that the disclosure of the information would involve unreasonable disclosure of personal information within the terms of section 47F, unreasonably affect a person adversely in respect of his or her lawful business or personal affairs of an organization within terms of s47G and, as it would on balance be contrary to the public interest to disclose the personal information, 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 document

ARPC must publish information that has been released in response to each freedom of information access request, subject to certain exemptions, 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. ARPC 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 ARPC 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.

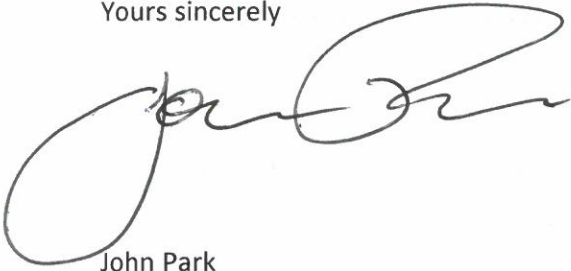
I advise you that the documents that will be placed on ARPC's disclosure log will be the same as the documents released to you.

ARPC's disclosure log can be found at <https://arpc.gov.au/resources-2/ips/>

Contacts

If you require clarification of any of the matters set out in this letter, please contact John Park on enquiries@arpc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Park', with a large, stylized initial 'J' and a long, sweeping horizontal stroke.

John Park
FOI Delegate

Attachment A - Reasons for Decision

Material taken into account

In reaching my decision, I have taken into consideration:

- the scope of your request and the content of the documents to which you sought access;
- advice from ARPC's officers with responsibility for matters relating to the documents to which you sought access;
- the relevant provisions of the FOI Act;
- ARPC's guidance material on the FOI Act, and
- guidelines on FOI, available on the Office of the Australian Information Commissioner's website.

Finding of fact and reasons for decision

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

Exemptions

The schedule of documents identifies the relevant sections of the Act under which exemptions have asserted in respect of the document. My reasons for finding particular exemptions 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. In part d) of your request you have requested access to documents relating to the decision to move the ARPC offices from Canberra to Sydney. Document 2 in the attached Schedule of Documents deals with the subject matter of your request. Where a matter irrelevant to your request is discussed in the identified documents, the matter has been deleted from the document and you have been provided with an edited copy of the document.

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 of documents 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 47G - business

Relevantly, section 47G conditionally exempts documents where disclosure would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

The subject matter of Document 1 described in the attached schedule of documents contains information relating to the claims made to ARPC relating to the Declared Terrorism Incident which occurred in December 2014. The document contains cedant names, insured names, addresses, policy limits, and limits of liability. There is no doubt that this is information concerning the business, commercial or financial affairs of that organisation. I find that disclosure of the material would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs. Accordingly, I find that the document is conditionally exempt under section 47G.

The subject matter of Document 2 is the business case relating to the decision to move ARPC's office from Canberra to Sydney. This document contains information relating to the commercial leasing arrangements of ARPC with commercial suppliers, as well as the incurred cost of the relocation such as redundancy payments made to staff. There is no doubt that this is information concerning the business, commercial or financial affairs of an organisation. I find that disclosure of the material would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs. Accordingly, I find that the document is conditionally exempt under section 47G.

Section 47F – Public interest conditional exemption - personal privacy

Section 47F conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information

Personal information is defined in section 4 of the FOI Act as:

“Information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual or an individual who is reasonably identifiable.”

The elements of ‘personal information’ are:

- it relates only to a natural person (not, for example, a company);
- it says something about the individual;
- it may be in the form of an opinion, it may be true or untrue; and
- is information about an individual or an individual who is reasonably identifiable.

For Document 2 in the attached schedule of documents section 47F is claimed where I have found that some information in the documents is personal information as it discloses the names of ARPC employees.

Disclosure unreasonable

If information is personal information, it will be exempt if disclosure would be ‘unreasonable’. There are a range of factors in deciding whether or not disclosure would be unreasonable, including:

- the nature of the information, i.e. it should not be bland or common place;
- the circumstances in which the information was obtained;
- the current relevance of the information;

- the stated object of the legislation in section 3 of the Act being to facilitate and promote the disclosure of information;
- the extent to which the person is a public figure;
- the extent to which the information is already a matter of public knowledge;
- whether there was any expectation of confidentiality; and
- whether the information would shed light on the workings of government.

I find that disclosure of the documents conditionally exempted under section 47F would involve unreasonable disclosure of personal information. Release of the personal information would be unreasonable because the information to be disclosed would provide a means to facilitate unwanted and unwelcome contact from strangers and, taken together, the information may allow attempts at identity theft or fraud.

Accordingly, I am satisfied that the documents are exempt under section 47F.

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:

- promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- 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. In this case, I have not identified any public interest grounds other than those listed in section 11B of the FOI Act.

The document does not reveal any information about the Government's operations, in particular the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community or reveal the reason for a government decision or any background or contextual information that informed the decision. Disclosure of the document will not enhance the scrutiny of government decision making but will contribute to open and transparent government. For these reasons I do not consider that any significant weight should be given to the public interest in promoting the objects of the FOI Act.

While some members of the public may have an interest in the subject matter of the document, it is not apparent that it describes a matter of public importance and, therefore, I do not consider that any significant weight should be given to the public interest in informing debate on a matter of public importance.

While the disclosure of the document would give visibility to government expenditure, it would appear unlikely that disclosure would contribute to promoting effective oversight of government expenditure and, so, this public interest holds only nominal weight.

Factors against disclosure

- (a) the interest in preserving the efficient and proper functioning of government;
- (b) the person's personal information is not publicly known;
- (c) the person to whom the information relates is not known to be associated with the matters dealt with in the document;
- (d) the interest in preserving the security of secure Commonwealth sites;
- (e) the interest in minimising the risks to the safety of the public from persons with malicious intent from accessing dangerous materials;
- (f) the information is not available from public sources;
- (g) the interest in allowing third parties to interact with government without risking loss of commercially sensitive information; and
- (h) disclosure could reasonably be expected to harm the interests of a third party going about their lawful business.

I consider that there is a strong public interest in:

- (a) protecting the security and safety of Commonwealth staff and, more generally, the Australian people; and
- (b) in government being able to engage with third parties in the performance of government functions and in those third parties being able to deal with government without their legitimate interests and lawful business being damaged by the mere fact of that dealing.

In my view, in relation to the documents, 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.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release the documents in full. The documents are therefore exempt under sections 47F and 47G. I have also found that the exempt material can be deleted from the documents and an edited copy of them provided to you.

Attachment B - Schedule of Documents

Document Number	Document Title	Pages	Released	Section
1	ARPC's RISE Claims report	2	Part	s.47G
2	Project Apple Business Case Relation to Sydney	19	Part	s.22, s.47F, s.47G

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).

47F Public interest conditional exemptions—personal privacy

General rule

- (1) 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).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - 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 publicly accessible sources;
 - d. any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- a. a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - b. it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- a. carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - b. is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- a. a medical practitioner;
- b. a psychiatrist;
- c. a psychologist;
- d. a counsellor;
- e. a social worker.

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

47G Public interest conditional exemptions—business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a

law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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 ARPC

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 ARPC will appoint an officer of ARPC 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 the internal review. No particular form is required to apply for the review, although it is desirable to set out in the application the grounds on which you consider that the decision should be changed.

A written application for an internal review should be sent by email or post to the FOI Coordinator at enquiries@arpc.gov.au, or by post to:

FOI Coordinator
Australian Reinsurance Pool Corporation
PO Box Q1432
Queen Victoria Building NSW 1230

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 ARPC's decision on internal review, you may also apply for review of this decision to the Information Commissioner.

External Review by the Australian Information Commissioner (AIC)

You do not have to seek an internal review of the decision directly from ARPC. 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 several ways. More information is available on the AIC's website at: <https://www.oaic.gov.au/freedomof-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: www.ombudsman.gov.au

The Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001
Web: <https://www.oaic.gov.au/freedom-of-information/foi-complaints>