



19 June 2019

C Faulk

Sent via email: foi+request-5353-e22aac64@righttoknow.org.au

Dear C Faulk

Your Freedom of Information Request sent on 5 April 2019

I refer to your request of 5 April 2019 under the *Freedom of Information Act 1982* (the FOI Act) as follows:

This is a freedom of information act request regarding the Radiation Protection Series No 3: Maximum Exposure Levels to Radiofrequency Fields — 3 kHz to 300 GHz and the Technical Report Series No. 164

I am requesting an electronic copy of the meeting minutes for any meetings conducted since June 2018, which discussed the above-mentioned report. This should include meetings which were specifically called with regards to this report, and those where this report was an agenda item.

Please also provide the draft and if complete, final report: Fundamentals in Non-Ionising Radiation

I am an officer authorised under section 23 of the 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 5 documents relevant to your request and have decided to:

- Release 3 documents in full
- Release 1 document in part
- Exempt 1 document in full

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.

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.

Contacts

If you require clarification of any of the matters set out in this letter please contact Gemma Larkins at foi@arpansa.gov.au.

Yours sincerely

Gemma Larkins

Gemma Larkins
Legal Officer
Office of the General Counsel



ATTACHMENT 'A' – REASONS FOR DECISION – C Faulk RPS 3

Material taken into account

In making my decision, I considered the following information:

- The terms of your request;
- The content of the documents to which you sought access;
- Consultation with the World Health Organisation;
- Previous consultation with a member of the Electromagnetic Energy Reference Group members;
- 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 (OAIC Guidelines).

Searches conducted

The following searches were conducted by the Radiation Health Services - Assessment and Advice Section who are responsible for providing information on electromagnetic radiation:

- Key word searches in the Electromagnetic Radiation folders in the share drive using the following key search terms:
 - RPS3
 - RF standard;
 - Radio frequency standard
 - 164
 - TR 164; and
 - Technical report 164
- The same key word searches were applied to search the outlook email calendar, inbox and sent folders of the staff who are primarily involved in providing information in relation to Electromagnetic Radiation.
- A separate search was undertaken on outlook to locate the draft version of Fundamental Safety Principles which was sent by email to ARPANSA from the World Health Organisation.
- A search of the Radiation Regulators Network meeting minutes was also undertaken.

Consultation

ARPANSA consulted with the World Health Organisation (WHO) under section 15(7) of the FOI Act in relation to the release of the draft *Fundamental Safety Principles for Protection Against Non-Ionizing Radiation* (Fundamental Safety Principles) document. The WHO objected to the release of the draft

Fundamental Safety Principles on the basis that it would divulge confidential communications between the WHO and the officials of the national agencies of the WHO Member States which would be prejudicial to the work undertaken by the member states and ultimately the WHO.

Consultation was also undertaken under section 27A, in relation to a related FOI request, which covered the same meeting minutes of the Electromagnetic Energy Reference Group meeting minutes dated 23 October 2018. This previous consultation, where a member of the public objected to the release of their name, remains relevant and has been relied on in making this decision to redact their name under section 47F.

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 of the FOI Act - deletion of exempt matter or irrelevant material

Section 22 of the FOI Act allows for the deletion of information which is either exempt or which is irrelevant to the scope of the request

Section 22(1)(a) of the FOI Act – material which is exempt or irrelevant

Where a decision is made to refuse access to a document on the ground that it is an exempt document or that it contains irrelevant material, section 22 allows an agency to make an edited copy of the document with the exempt or irrelevant material deleted. You have been provided with such edited copies of documents.

The schedule identifies the relevant section of the FOI Act under which the material has been deleted.

Exemptions

The schedule of documents identifies the relevant sections of the FOI Act under which exemptions have been asserted in respect of the document. My reasons for finding particular exemptions are set out below.

Section 33 of the FOI Act - Documents affecting national security, defence or international relations

Section 33 exempts documents that affect Australia's national security, defence or international relations.

The OIAC Guidelines provide that the phrase 'international relations' has been interpreted to mean the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.

A document is exempt under section 33 if disclosure:

- (a) would, or could reasonably be expected to, cause damage to the Commonwealth's security, defence or international relations; or
- (b) disclosure would divulge information communicated in confidence to the Commonwealth by a foreign government, an agency of a foreign government or an international organisation.

I have made a decision to exempt the draft Fundamental Safety Principles document on the basis of:

- Section 33 (a) of the FOI Act, that is, the disclosure of the document would, or could reasonably be expected to, cause damage to the Commonwealth's international relations; and

- 33 (b) of the FOI Act, that is, disclosure would divulge information communicated in confidence to the Commonwealth by an international organisation.

In May 1996, the WHO launched the International EMF Project to assess the health and environmental effects of exposure to electromagnetic fields. Oversight of the Project is provided by an International Advisory Committee (IAC).

ARPANSA is officially involved in the International EMF Project as a member of the IAC and as a WHO Collaborating Centre in the area of non-ionizing radiation. In this role, ARPANSA has been asked to provide expert opinion on the first draft of the Fundamental Safety Principles.

The first draft of the Fundamental Safety Principles document was prepared by the WHO and was sent to IAC members including ARPANSA on a confidential basis. This document is not publically available.

The WHO was consulted as part of processing this FOI and has objected to the release of the Fundamental Safety Principles document before it is finalised on the basis that it would divulge confidential communications between the WHO and the officials of the national agencies of the WHO Member States which would be prejudicial to the work undertaken by the member states and ultimately the WHO.

The release of the Fundamental Safety Principles document which was sent to ARPANSA on the shared understanding that it was confidential could reasonably be expected to both impede the future flow of confidential information from international organisations and damage the Australian government's ability to maintain a good working relationship with the WHO.

Section 33(b) exempts information communicated in confidence to the Australian Government or agency by an international organisation. The draft Fundamental Safety Principles document was communicated in confidence between the WHO and ARPANSA. There was a shared understanding that the communication would be kept confidential.

Section 47F of the FOI Act – Public interest conditional exemption - Personal privacy

Section 47F of the FOI Act 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 (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The elements of 'personal information' are:

- i. it relates only to a natural person (not, for example, a company);
- ii. it says something about the individual;
- iii. it may be in the form of an opinion, it may be true or untrue, and it may form part of a database; and
- iv. the individual's identity is known or is reasonably ascertainable using the information in the document.

For the documents where section 47F is claimed, I have found that the information is personal information as it discloses the name of an individual whose identity is apparent.

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 FOI 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.

Following the outcome of a previous third party consultation in relation to the same document, I find that disclosure of the document which has the name conditionally exempted under section 47F(1) would involve the unreasonable disclosure of personal information.

The release of the personal information concerning a member of the public would be unreasonable for the following reasons:

- The individual is not a public servant. The individual is a member of the community representing Castle Hill High School P & C. The individual has expressed concern about the publication of their name on the internet, particularly in the context of 5G. The individual has intentionally kept a minimal digital presence.
- Their involvement in the Electromagnetic Energy Reference Group (EMERG) is not widely known beyond the EMERG and the Castle Hill High School P & C.
- The identity of the individual would not contribute to public debate or shed light on the workings of the government.

Accordingly, I am satisfied that the documents are partially 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 of the FOI Act). 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 FOI 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.

Factors against disclosure

- the interest in preserving the efficient and proper functioning of government;
- the person's personal information is not publicly known;

- the person to whom the information relates is not known to be associated with the matters dealt within the document;
- the information is not available from public sources; and
- the individual's reasonable expectation that the attendance at the meetings would not be published.

In my view, in relation to the relevant 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.

I consider that the release of the name of the individual, particularly in circumstances where the individual has expressed concern around the publication of their name, may discourage other individuals from engaging with ARPANSA and other government bodies on matters of public concern.

Taking these matters into account, I find that it would, on balance, be contrary to the public interest to release the document in full. Therefore, parts of the document are exempt under section 47F.



ATTACHMENT B – SCHEDULE OF RELEVANT DOCUMENTS – C Faulk RPS 3

Doc No.	Folio number	Document	Decision	FOI Act Section
1	1 – 10	Radiation Health Committee Meeting Minutes dated 17-18 July 2018	Released in full	N/A
2	11 - 21	Radiation Health Committee Meeting Minutes dated 9 -10 October 2018	Released in full	N/A
3	22 - 25	Electromagnetic Energy Reference Group Meeting Minutes	Released in part	s.47F
4	26 - 27	Electromagnetic Energy Group Meeting Summary	Released in full	N/A
5	28 - 44	Draft Fundamental Safety Principles For Protection Against Non-Ionizing Radiation	Exempt in full	s.33



ATTACHMENT C – RELEVANT FOI ACT PROVISIONS – C Faulk – RPS 3

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).

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth; or
 - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

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 (I) 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)



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 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:

<p>Commonwealth Ombudsman GPO Box 442 CANBERRA ACT 2601.</p> <p>Web: www.ombudsman.gov.au</p>	<p>The Australian Information Commissioner GPO Box 2999 OR GPO Box 5218 Canberra ACT 2601 Sydney NSW 2001</p> <p>Web: https://www.oaic.gov.au/freedom-of-information/foi-complaints</p>
---	--