



23 August 2019  
FOI ref: 2528

Ms Evelyn Doyle

By email: [foi+request-5511-c7daef24@righttoknow.org.au](mailto:foi+request-5511-c7daef24@righttoknow.org.au)

Dear Ms Doyle

### Freedom of Information Request - Decision

I refer to your request to the Department of the Treasury (the **Treasury**) on 9 July 2019, for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). On 24 July 2019, you revised the scope of your request to:

*All briefings / briefs to the Treasurer from the Department of the Treasury about the establishment of a Beneficial Ownership Register (BOR) including any about the decision not to proceed with the BOR, from January 2018 onwards.*

I am an authorised decision maker under section 23 of the FOI Act.

#### Decision

The Treasury has identified 13 documents in the scope of your request, listed in the attached schedule. I have decided to release six documents. I have also decided to refuse access to seven documents in full. Irrelevant information in the documents has been deleted under section 22 of the FOI Act. My decision on each document is shown in the schedule.

The documents for release are attached.

Further information regarding my decision is set out below.

#### Material Considered

The material to which I have had regard in making this decision includes:

- the scope of the FOI request
- the content of the documents subject to your request;
- the relevant provisions in the FOI Act;
- advice from subject matter experts within the Treasury; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **FOI Guidelines**).

## Reasons for decision

### Material deleted pursuant to Section 22

Section 22 of the FOI Act allows for information that is irrelevant to your request to be deleted.

Document 3 contains names and direct phone numbers of government employees. We informed you in our email of 16 July 2019 that it is our usual practice not to include the personal information of government employees and invited you to inform us if you did not agree with us processing the request on this basis. As we did not hear from you in relation to this matter, the personal information of government employees has been excluded from the scope of your request and deleted under section 22 of the FOI Act.

Documents 3 and 7 contain material outside the scope of your request, which has been deleted under section 22 of the FOI Act.

### Cabinet material – Section 34

Sub section 34(1) of the FOI Act provides a document is exempt if:

- (a) both the following are satisfied:
  - i. the document has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted; and
  - ii. the document was brought into existence for the dominant purpose of submission to Cabinet.
- (b) it is an official record of the Cabinet; or
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
- (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

Sub section 34(3) provides that a document is exempt to the extent that it contains information the disclosure of which would reveal a Cabinet decision or deliberation, unless the existence of the deliberation or decision has been officially disclosure.

Parts of document 7 and the whole of documents 8 to 13 contain material, or draft material, that was created for the dominant purpose of briefing a Minister or was a document that was, or was proposed to be, submitted to Cabinet or reveals a Cabinet decision or deliberation. As such, this material is exempt under section 34 of the FOI Act.

Accordingly, I have exempted part of document 7 and the whole of documents 8 to 13 as set out in the schedule.

### Deliberative matter – Section 47C

Section 47C(1) of the FOI Act provides a conditional exemption for documents that, if disclosed, would reveal an opinion, advice or recommendation obtained, or prepared, for the deliberative processes involved in the functions of an agency or Minister (deliberative matter). A conditionally exempt document may be withheld from release if access to it would be against the public interest.

Part of document 7 is a decision brief to the Minister for Revenue and Financial Services. It contains opinions and advice on an ongoing matter that is currently under consideration. This material is deliberative.

Whilst I have identified factual material within the brief, it is so intertwined with deliberative matter that if it were to be disclosed, it would reveal the nature of the deliberations. I therefore consider the factual material within the brief to form part of the deliberative matter.

Accordingly, I find that part of document 7 to be conditionally exempt under section 47C.

### Application of the public interest test

As I have found the information to be conditionally exempt I will now consider whether access to the information would be contrary to the public interest

Section 11A(5) of the FOI Act provides that conditionally exempt material must be released unless its disclosure would, on balance, be contrary to the public interest. Section 11B(3) sets out public interest factors favouring release, and section 11B(4) sets out factors that must not be taken into account. Guidelines issued by the Australian Information Commissioner also sets out factors in favour of, and against, releasing conditionally exempt material.

I have considered the public interest factors favouring release of the material, such as promotion of the objects of the FOI Act and the promotion of public participation in government decision-making and the benefits of informed public debate based on accurate information. I have not taken into account any of the matters set out in section 11B(4) of the FOI Act.

I have also considered factors which do not favour disclosure. The decision brief discusses material and a position that was in an early deliberative phase of an ongoing deliberative process. Premature release of this information could prejudice the advisory processes carried out within government, interfere with the decision making required for the continuing development of the matter and reveal confidential deliberations being taken to Cabinet.

On balance, I consider the public interest factors against disclosure to be of greater weight than the public interest factors favouring disclosure. I therefore find that part of document 7 to be exempt under section 47C.

### **Rights of Review**

A statement setting out your rights of review in this matter is attached.

**Disclosure Log**

The Treasury publishes all documents disclosed in response to FOI requests (other than personal or business information that would be unreasonable to publish) on the Treasury website at the same time as the applicant receives the response. This is consistent with the arrangements established by section 11C of the FOI Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate O'Rourke', with a long horizontal flourish extending to the right.

Kate O'Rourke  
Principal Adviser  
Consumer and Corporations Policy Division

## FOI 2528 Document Schedule

Doc No	Description	Decision
1	Transcript of a question on notice from Senate Estimates regarding the beneficial owners register.	Release in full
2	Transcript of a question on notice from Senate Estimates regarding to Law Enforcement Agencies.	Release in full
3	Question Time Brief on Beneficial Ownership	Release with irrelevant deleted under section 22 of the FOI Act.
4	Transcript of a question on notice from Senate Estimates regarding beneficial ownership register.	Release in full
5	Transcript of a question on notice from Senate Estimates regarding beneficial ownership register.	Release in full
6	Transcript of a question on notice from Senate Estimates regarding stakeholder views on beneficial owner register.	Release in full
7	Department briefing to the Minister for Revenue and Financial Services	Exempt in full section 34(1)(d) - Cabinet section 34(3) - Cabinet section 47C – deliberative section 22 (irrelevant information)
8	Cabinet document	Exempt in full under section 34(1)(c) - Cabinet
9	Cabinet document	Exempt in full under section 34(1)(c) and 34(1)(d) - Cabinet
10	Cabinet document	Exempt in full under section 34(1)(c) - Cabinet
11	Cabinet document	Exempt in full under section 34(1)(c) and 34(1)(d) - Cabinet
12	Cabinet document	Exempt in full under section 34(1)(c) and 34(1)(d) - Cabinet
13	Cabinet document	Exempt in full under section 34(3) - Cabinet

## INFORMATION ON RIGHTS OF REVIEW

### 1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

FOI Team  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**OR**

### 2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**AND/OR**

### 3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.