

**Notice of Decision under the
Freedom of Information Act 1982 (FOI Act)**

Applicant: Ms Else Kennedy

Decision Maker: Mrs Roslyn Hatton
Deputy – Chief Financial Officer

Date of Decision: 10 December 2019

Organisation: Australian Nuclear Science and Technology Organisation (**ANSTO**)

Scope

1. This is my decision in relation to your *Freedom of Information Act 1992 (FOI Act)* request to ANSTO received on 30 July 2019 (**July Request**).

2. I note that your original request on 30 July 2019, sought the following information:

I am writing to request access to documents under the Freedom of Information Act relating to the monitoring of Building 164 at Melbourne University's Parkville campus during, prior to and following its demolition.

3. I note that on 15 August 2019, I sent you a letter which requested you to limit the scope of the July Request, on the basis *that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its complexity and broad scope.*

4. I note that after that letter you agreed to limit the scope of your request on 29 August 2019 (**August Request**) to the following documents:

Reports or documents which summarise the results of radiation, heavy metals and hazardous materials monitoring during the periods 2010-12 and 2017 - present.

If not present in the summary documents, I request a copy of the number of instances and the measurement reading of any radiation levels in excess of the public safety standard.

5. In response to your correspondence, ANSTO's FOI Co-Ordinator, Anne McManus suggested that the breadth of your August Request may still involve a scope too wide for myself as delegate to agree to and suggested that the August Request be limited to locating only *'relevant spreadsheets for agreed period, without any duplicates and you consider whether you wish to make application to public health regulatory agencies about their records of dose measurements'*.

6. On 29 August 2019, I note that you then agreed to limit the August Request as follows:

I agree to limit the scope to the relevant spreadsheets for the agreed period, without any duplicates (Revised Request).

7. The Revised Request was accepted by me as FOI Delegate by way of letter on 12 September 2019.
8. On 8 October 2019, I requested the ANSTO FOI Co-Ordinator to contact you, to advise that, in reviewing the Revised Request, I determined that third parties required consultation under the Act. You were advised that this extended the processing period for the Revised Request to 11 November 2019.
9. Under those consultations, 3 parties made submissions in relation to the documents captured by the Revised Request. As a result, before making a final decision, I was required to advise those third parties of the decision I proposed to make and advise them of their right to seek an internal review of my proposed decision, if they were not satisfied with that decision. Assuming no internal review was sought by any of those third parties the due date for my decision on the Revised Request was 11 December 2019.
10. All 3 third parties consulted, were satisfied with my decision and did not seek an internal review of what I proposed to release to you. Accordingly, this constitutes my decision in relation to the Revised Request.

Summary of Decision

11. I am authorised under section 23 of the FOI Act to make a decision.
12. I have identified 28 documents, comprising 324 folios, which fall within the scope of your Revised Request.
13. I have decided to release 16 documents in full and 3 in part. I have also decided to fully exempt and not release 9 documents to you.
14. I have included at Annexure A, a Schedule that describes the documents identified as falling within the Revised Request, and my decision relating to each document or folios.

Material taken into account

15. In making my decision, I have considered the following:
- a. the terms of the Revised Request;
 - b. the content of the documents that fall within the scope of the Revised Request;
 - c. The content of documents relevant to the request which do not strictly fall within the scope of the Revised Request;
 - d. the relevant provisions of the FOI Act;

- e. the Government's FOI Guidelines produced by the Office of the Australian Information Commissioner (**FOI Guidelines**); and
- f. assistance from Anne McManus, FOI Act Co-Ordinator, in the ANSTO in-house legal team.

Consultation

- 16. I note that once your Revised Request had been accepted by myself as the FOI Delegate on 12 September 2019, I instructed Ms McManus to email you a letter detailing the necessity to make a number of third party consultations under the FOI Act. This letter was sent to you by email on 8 October 2019.
- 17. Three third parties chose to make submissions to me under the consultation process. I took those submissions into account in making my decision.

Enquiries and Searches

- 18. Once I accepted the Revised Request, I requested ANSTO staff search their files for relevant documents and to supply them to me as delegate, unless this had already been done. The relevant documents supplied as falling under the Revised Request totalled 28 and are the documents listed in Annexure A.
- 19. In considering the documents, I made enquires of relevant staff as to the nature of the documents, where they had been sourced or who had authored them, and an explanation of how they fell under the Revised Request. I then used this information to compile Annexure A.
- 20. Whilst the documents in their original form are Excel Spreadsheets, due to the need to apply redactions or exemptions to some folios under the FOI Act, the Excel Spreadsheets were converted to PDF Files which have been combined into a single file.

Exemptions

- 21. I have decided that 3 documents are partially exempt and 9 are fully exempt under the FOI Act. The reasons for my decision are summarised in Annexure A, and the sections of the FOI Act upon which I have based my decision are set out in Annexure A.
- 22. The relevant exemptions are summarised below.

Section 47– documents disclosing trade secrets or commercially valuable information

- 23. Section 47(1)(b) on a non-conditional basis accounts for the disclosure of documents that would disclose any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- 24. If section 47(1) applies, documents are fully exempt from release.

25. I have decided which documents, folios and parts of folios contain commercially valuable information and are fully or partially exempt.

Section 47B – documents affecting Commonwealth-State relations

26. Section 47B conditionally exempts documents if their disclosure would or could reasonably be expected to damage Commonwealth and State relations or disclose information communicated in confidence by or on behalf of a government or authority of a State to the Commonwealth.
27. I have determined that a number of documents, folios or parts of folios, may fall within this exemption set out in section 47B(a) in so far as they would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State and that it would be contrary to the public interest to release those documents or parts of documents to you.
28. In terms of considering whether the documents would or could reasonably be expected to damage relations between the Commonwealth and a State, I believe the term '*would or could reasonably be expected*' is a test requiring me as decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.
29. The stringency of the word 'could' requires myself as delegate to analyse the reasonable expectation rather than certainty of the event, effect or damage occurring.
30. In this case I have carefully analysed the documents and concluded that the release of the subject documents in full or part is contrary to the public interest due to the reasonable expectation of an effect damaging Commonwealth and State relations that may occur in the future.

Section 47G – business affairs exemption

31. Section 47G conditionally exempts documents where the disclosure of information concerning the business, professional, commercial or financial affairs of a person or organisation could reasonably be expected to adversely affect those affairs or prejudice the future supply of information to the Commonwealth.
32. I believe that the disclosure of the subject documents, or parts thereof, would, or could reasonably be expected to, unreasonably affect a third party or individual adversely in respect of his or her lawful business or professional affairs or an organisation in undertaking in respect of its lawful business, commercial or financial affairs.
33. I also believe that the release of the documents identified as falling under s 47G in Annexure would be contrary to the public interest.

Section 47F – documents affecting personal privacy

34. Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.
35. I am satisfied that the following material is '*personal information*' as defined in s 4 of the FOI Act and have determined it is conditionally exempt under s 47F, for the reasons stated.

- *Personal details of individuals associated with request forms, and results; and*
- *Mobile or personal phone numbers of ANSTO employees, and former employees and email addresses of such persons.*

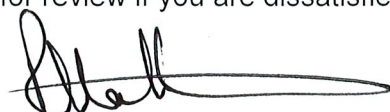
36. I am satisfied that disclosure of the relevant names and identifying information, and of personal or mobile phone numbers would be unreasonable because it relates to other persons and is not related to yourself or pertinent to the Revised Request. The information is not related to ordinary duties and responsibilities and is of a kind that I believe the persons involved would not wish to have disclosed. The information relevant to phone numbers may not be well known or publicly available.
37. I have also considered the FOI Guidelines issued by the OAIC, and note at [6.130] that 'personal information' can include a telephone number and the same is true in my view for email addresses. I am not aware that these phone numbers and email addresses are publicly available and in my view their disclosure would be unreasonable.

The public interest

38. I am aware that in accordance with s 11A(5), conditionally exempt material must be released unless its disclosure at this time would, on balance, be contrary to the public interest. I have considered this question and in doing so have considered the factors favouring access in s 11B(3) of the FOI Act and have not had regard to factors that are irrelevant in s 11B(4).
39. I acknowledge that there is a public interest in documents of ANSTO being made available to the public for the purpose of encouraging public debate and to promote oversight of ANSTO's activities. However, I do not believe disclosure of the material I have decided is conditionally exempt would facilitate any of these objects. Any public interest in the disclosure of the documents you have requested is satisfied by the significant amount of material that has been released to you.
40. I consider that there is a strong public interest in protecting individuals from interference with their privacy, and in maintaining the relationship between ANSTO and its Commonwealth and State counterparts.
41. Accordingly, I have concluded that full or partial disclosure of the documents indicated in Annexure would, on balance, be contrary to the public interest.

Review Rights

42. You are entitled to seek a review of this decision. Annexure B sets out your rights to apply for review if you are dissatisfied with my decision.



Mrs Roslyn Hatton

ANSTO Deputy – Chief Financial Officer

Duly authorised officer under Section 23 of the FOI Act

ANNEXURE B – REVIEW RIGHTS

Internal review

If you are dissatisfied with this decision, you have certain rights of review available to you. Firstly, under section 54 of the Act, you may apply for an internal review of the decision. It is not necessary to go through ANSTO's internal review process and you may apply for a review by the Information Commissioner (see below). However, the Information Commissioner is of the view that it is usually better to seek an internal review first.

Your application for an internal review must be made within 30 days, or such further period as ANSTO allows, of you receiving this notice.

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
Coordinator
Locked Bag
2001

Kirrawee DC NSW 2232

Email: FreedomofInformationRequests@ansto.gov.au

Information Commissioner

You may also apply to the Information Commissioner for a review of the decision, or the subsequent internal review decision made by ANSTO. Your application must be made within 60 days, or such further period as the Information Commissioner allows, of you receiving the notice of an initial decision or a decision made on internal review.

No particular form is required to apply for review although it must give details on how notices may be sent to you (e.g. postal or email address) and include a copy of the notice of the decision given by ANSTO. The application should also contain particulars of the basis on which you dispute the decision.

You can lodge your application with the Office of the Australian Information Commissioner in a number of ways:

Online: www.oaic.gov.au

Post: GPO Box 5218 Sydney NSW

2001 Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

In person: Level 3, 25 National Circuit, Forrest, ACT, or at Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW

Administrative Appeals Tribunal

You may subsequently apply to the Administrative Appeals Tribunal (**AAT**) for review of a decision made by the Information Commissioner with which you are dissatisfied. An application to the AAT must be made within 28 days after the day on which you receive the Information Commissioner's decision.

The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by an application fee, which may be refunded in some instances. The fee may be waived by the AAT where financial hardship is shown.

The AAT has a help desk to advise on its procedures. More information is available on the AAT's website www.aat.gov.au.

The contact details of the AAT in the State of your mailing address are:

District Registrar

Administrative Appeals Tribunal GPO Box 9955

Sydney NSW 2001

Ph: (02) 9391 2400

Fax: (02) 9283 4881

Complaints to the Commonwealth Ombudsman

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

Complaints can be made in writing (GPO Box 442, Canberra ACT 2601), by telephone (1300 362 072), in person or by using an online complaint form: see www.ombudsman.gov.au.

The Ombudsman usually prefers applicants to seek internal review before requesting investigation of a complaint by the Ombudsman.