



8 May 2014

FOI IA 13-08

Mr Errol Brandt
By Email

Dear Mr Brandt,

**Statement of reasons made under the Freedom of Information Act 1982
Decision and reason for decision of Stephen Alchin Executive Director,
Planning**

Applicant: Mr Errol Brandt
Decision date: 5 May 2014
FOI reference number: FOI IA 13-08

1. I have made a decision not to release any documents subject to your request.

Authority to make this decision

2. I, Stephen Alchin, Executive Director, Planning, am an officer authorised by the Office of the Infrastructure Coordinator (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the Freedom of Information Act 1982 (the FOI Act).

Background

3. On 11 March 2014 you made a request for access to documents in the possession of Infrastructure Australia, which refer or relate to the East West Link project.

The request included;

"Copies of correspondence dated between 1 July, 2013 and 1 January 2014, between Infrastructure Australia and the Victorian government, and between the Victorian Government and Infrastructure Australia, regarding the Victorian government's submission to Infrastructure Australia on the proposed East West Link Motorway.

Infrastructure Australia
GPO Box 594, Canberra ACT 2601 Australia
Telephone (02) 8114 1900 facsimile (02) 8114 1932
www.infrastructureaustralia.gov.au

This scope should be further refined only to include documents where there is reference to the term "business case", "benefit-cost ratio", "BCR" or the term "agglomeration economics".

Documents subject to this request

4. The Department has undertaken a search of its records and has identified two documents that fall within the scope of your request, as set out above.
5. The documents subject to your request are listed in the schedule of documents at Attachment 1.
6. I have decided that no costs will be charged to you.

Decision

7. I have made a decision not to release any documents subject to your request.

Reasons for Decision

8. My decision to refuse your request for access to the documents is explained below.

The documents were submitted to Infrastructure Australia by the Victoria Department of Transport/ Victorian Department of Transport, Planning and Local Infrastructure in confidence. The disclosure of information provided by the Victorian Government in confidence has the potential to create difficulties in future intergovernmental negotiations between the Commonwealth and the Victorian Government. In particular it may prejudice the flow of information required for the administration or development of intergovernmental projects.

The Victorian Government expressed concern that release of this information could prejudice the flow of this information and ultimately affect the development of future Commonwealth-Victorian projects.

In making my decision, I have taken into account the views of the Victorian Government in relation to Sections 47B, 47C and 47E of the FOI Act. I also considered the following provisions of the FOI Act relevant to my decision:

- | | |
|-------------|--|
| Section 11B | Public interest exemption – factors |
| Section 22 | Access to edited copies with exempt or irrelevant material deleted |
| Section 34 | Cabinet documents |
| Section 45 | Documents communicated in confidence |
| Section 47B | Commonwealth-State relations |

How my decision was based mainly on: Commonwealth-State relations (s47B).

Section 47B creates a conditional exemption where disclosure of a document either:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), 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 (s 47B(b)).

I believe the documents fall into both categories.

Your rights of review

9. If you disagree with my FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for a review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

10. You can ask the Department to review its decision in relation to **access** to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different Departmental Officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Infrastructure Australia FOI Coordinator:

Telephone: (02) 8114 1900

Mobile: 0430 156 409

Fax: (02) 8114 1932

Email: mail@infrastructureaustralia.gov.au

Or by post to:

Infrastructure Australia

GPO Box 594

Canberra ACT 2601

11. You can ask the OAIC to review the Department's decision in relation to **access** to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review.

You do not need to seek an internal review from the Department before seeking review by the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 2999
Canberra ACT 2601

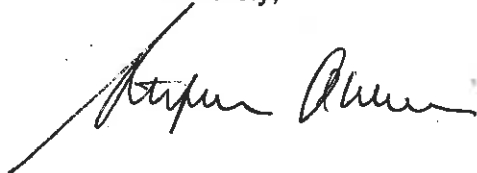
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

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

More information about Information Commissioner Reviews is available from <http://www.oaic.gov.au/freedom-of-information/foi-reviews>

12. If you wish to discuss this decision, please do not hesitate to contact the Department's FOI coordinator on 02 8114 1900.

Yours sincerely,



Stephen Alchin
Executive Director, Planning
8 May 2014

Attachment 1 – Documents

1. Letter to Mr Dean Yates, Secretary, Victorian Department of Transport, Planning and Local Infrastructure from Mr Michael Deegan – Infrastructure Australia Infrastructure Co-ordinator requesting information in relation to East West Link.
2. Letter from Ms Gillian Miles, Acting Secretary, Victorian Department of Transport, Planning and Local Infrastructure in relation to organising a briefing, letter dated 22 July 2013.