



**Dan Monceaux**

Email: [foi+request-5621-0bead7ea@righttoknow.org.au](mailto:foi+request-5621-0bead7ea@righttoknow.org.au)

Dear Mr Monceaux

**Freedom of Information Request No. 190910**  
**Decision on Access**

I refer to your request of 9 September 2019 to the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**). Your request seeks access to:

*Copies of all submissions received by the Department in response to EPBC Referral 2019/8420 - Cultana Pumped Hydro Energy Scheme.*

**Authority**

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

**Decision**

The Department has identified six documents relevant to the scope of your request.

I have decided to grant access to documents 1, 1a, 2, 2a, 3, and 3a in part, as they contain material that I consider exempt pursuant to section 47F of the FOI Act, or irrelevant to the request pursuant to section 22 of the FOI Act.

A schedule describing these documents and my decision in respect of each is at **ATTACHMENT A**. **ATTACHMENT B** contains information regarding your review rights, should you wish to seek review of my decision.

The documents are at **ATTACHMENT C**.

**Material considered in making my decision**

I had regard to:

- 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 Department
- third party responses to third party consultation
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

## Reasons for decision

### Material deleted pursuant to section 22

#### *Deletion of irrelevant material*

Section 22 of the FOI Act allows for information that is irrelevant to your request to be deleted. The documents captured by your request include the personal information of junior government officers and the personal contact information of senior government officers. As iterated in our correspondence of 16 September 2019, the Department considers this material to be irrelevant to the scope of a request where no representation has been made that they be specifically included. The Department has not received a representation to this effect. Accordingly, I have decided that the personal information of junior government officers and the personal contact details of senior officers are irrelevant to the scope of your request and have deleted that information pursuant to section 22 of the FOI Act. I have deleted information on this basis from documents 1, 1a, 2, 2a, 3 and 3a.

### Material exempted under section 47F

#### *Personal privacy*

Section 47F(1) of the FOI Act provides that where the disclosure of a document would result in an unreasonable disclosure of personal information about any person (including a deceased person), that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if giving access to it would be against the public interest.

#### Unreasonable disclosure of information

Documents 1, 1a, 2, 2a, 3 and 3a contain the names and contact details of government officers. I am satisfied that this information is “personal information” for the purposes of the FOI Act.

To determine whether the disclosure of this personal information was unreasonable, I gave regard to the following criteria under 47F(2) of the FOI Act:

- (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 I consider relevant.

Against criteria (a) – (c), I consider that:

- (a) the information is not well known;
- (b) the persons are not known to be associated with the matters dealt with in the document;  
and
- (c) the information is not available from publicly accessible sources.

Against criteria (d), and consistent with the decision in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437, I considered all relevant circumstances, including the nature of the information, the purpose for which the information was obtained, the likelihood of the information being information which the person concerned would not wish to have disclosed, and whether the information has any current relevance. In particular, I am satisfied that the personal information in question is not relevant to the information dealt with in the documents and is information which the persons concerned would not wish to have disclosed.

With reference to my findings above, I consider that any disclosure of the names and contact details of government and state government officers contained within the documents would be unreasonable, and therefore that this personal information is conditionally exempt. I will consider whether access to this personal information would be contrary to the public interest.

### Contrary to the public interest

To determine whether access to the conditionally exempt personal information would be contrary to the public interest, I must consider those public interest factors favouring access to the personal information and weigh them against those public interest factors against access. If satisfied that the public interest factors against access outweigh those favouring access, I may decide that access to the personal information is contrary to the public interest.

I did not consider any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Section 11B(3) sets out the public interest factors that favour access to information:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information.*

Against these factors, I consider that access to personal information of government officers contained within Documents 1, 1a, 2, 2a, 3 and 3a would promote the objects of the FOI Act in respect of providing access to information held by the Government (promoting section 3(1)(b)) and that the information is a national resource (section 3(3)).

However, I do not consider that this specific personal information would allow for greater insight into Government decision making (section 3(2)(a)) or that its release would allow for increased discussion or scrutiny of Government activities (section 3(2)(b)). Further, in my view, the disclosure of this personal information would not inform debate on a matter of public importance, promote effective oversight of public expenditure, or allow a person, being the applicant, further access to his or her own personal information.

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I consider that access to the personal information of government officers contained within Documents 1, 1a, 2, 2a, 3 and 3a:

- (a) could reasonably be expected to prejudice the protection of an individual's right to privacy;*

After considering the public interest factors favouring access and those against access, I consider that the factor against access to outweighs those favouring access, and that access to the personal information discussed above to be contrary the public interest.

I have therefore decided to withhold access to the conditionally exempt personal information of government officers contained within Documents 1, 1a, 2, 2a, 3 and 3a pursuant to section 47F of the FOI Act.

### **Disclosure Log**

Pursuant to section 11C of the FOI Act, the Department will publish on their website details of how the documents at **ATTACHMENT C** may be obtained within 10 days of providing you with this decision.

**Further assistance**

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at [foi@environment.gov.au](mailto:foi@environment.gov.au).

Yours sincerely

**Andrew McNee**

Assistant Secretary

Assessments and Governance Branch

8 November 2019

**ATTACHMENTS:**

- A.** Schedule of documents
- B.** Information sheet "Your Review Rights"
- C.** Documents subject to your request



**FOI 190910 Schedule of Documents**

No	Description	Decision
<b>1</b>	Email correspondence - cover email containing attached letter responding to Department's request to comment on referral Email - For information - Department of Agriculture Response - EPBC 2019-8420	<i>Release in part</i> Section 22 - personal information of government officers  Section 47F – personal information of government officers
<b>1a</b>	Letter correspondence - response to Department's request to comment on referral - 2019-8420 - Referral - Comment - Agriculture and water resources	<i>Release in part</i> Section 22 - personal information of government officers  Section 47F – personal information of government officers
<b>2</b>	Email correspondence - cover email containing attached letter responding to Department's request to comment on referral Invitation to comment on EPBC referral 2019/8420 Cultana Pumped Hydro	<i>Release in part</i> Section 22 - personal information of government officers  Section 47F – personal information of government officers
<b>2a</b>	Letter correspondence - response to Department's request to comment on referral 2019-8420 - Referral - Comment - Defence	<i>Release in part</i> Section 22 - personal information of government officers  Section 47F – personal information of government officers
<b>3</b>	Email correspondence - cover email containing attached letter responding to Department's request to comment on referral EPBC 2019/8420 - Cultana Pumped Hydro Energy Scheme, near Port Augusta, SA	<i>Release in part</i> Section 22 - personal information of government officers  Section 47F – personal information of state government officers

No	Description	Decision
3a	Letter correspondence - response to Department's request to comment on referral DEW response EPBC 2019-8420 Cultana Pumped Hydro Energy	<i>Release in part</i> Section 22 - personal information of government officers Section 47F – personal information of state government officers



## **YOUR REVIEW RIGHTS**

You may seek review of this primary decision either internally by the Department (internal review), or externally by the Information Commissioner (Information Commissioner review).

### **Internal review**

An internal review is a review of the decision conducted by a senior officer within the Department. The reviewing officer will not be the same person whom made the primary decision.

If you wish to seek an internal review, you must submit a written application to the Department within 30 days after the day you are notified of this decision. Whilst there is no required form for the written internal Review application, it is recommended that you include your reasons as to why the primary decision should be reviewed.

The decision on the internal review will be provided to you within 30 days of the Department receiving your application.

You can submit your written internal review application to the below addresses:

**Email:** [foi@environment.gov.au](mailto:foi@environment.gov.au)

**Post:** FOI Contact Officer  
General Counsel Branch  
Department of the Environment and Energy  
GPO Box 787  
Canberra ACT 2601

### **Information Commissioner review**

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

**Online:** <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

**Post:** GPO Box 5218, Sydney NSW 2001

**Fax:** 02 9284 9666

**Phone:** 1300 363 992

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)