



Mr James Thomas

Email: foi+request-5648-5d60fc3f@righttoknow.org.au

Dear Mr Thomas

Freedom of Information Request No. 190916
Decision on Access

I refer to your request of 24 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 documentation (including Registration of Interest) and correspondence held by the Department that details the rationale for the decision to shortlist Delta - Lake Macquarie, New South Wales - Coal Upgrade under the Government's 'Underwriting New Generation Investments program'.

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 4 documents relevant to the scope of your request.

I have decided to:

- **grant access** to Documents 2, 3 and 4 in part, as they contain material that I consider exempt pursuant to sections 34(3), 45 or 47C of the FOI Act, or irrelevant to the request pursuant to section 22 of the FOI Act; and
- **refuse access** to Document 1 in full, as it consists of material that I consider exempt pursuant to section 45 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

- 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 25 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.

Further, Documents 2, 3 and 4 contained material that did not relate to the rationale for the decision to shortlist the Delta - Lake Macquarie, New South Wales - Coal Upgrade under the Government's Underwriting New Generation Investments (**UNGI**) program. I have deleted this material pursuant to section 22 of the FOI Act, as it is irrelevant to the scope of the request.

Material exempted under section 34

Cabinet documents

I have decided that Documents 2 and 4 are exempt in part from disclosure under section 34(3), because their disclosure would reveal a Cabinet decision or deliberation.

Material exempted under section 45

Documents obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action, by a person (other than an agency or the Commonwealth), for a breach of confidence.

Document 1 in full and Document 3 in part consist of material that was provided by a third party to the Department under an explicit agreement that the material be kept confidential. I have therefore made a decision to exempt Document 1 in its entirety and Document 3 in part under section 45 of the FOI Act.

Material exempted under section 47C

Deliberative processes

Section 47C(1) of the FOI Act provides, in part, that where the disclosure of a document would disclose matter in the nature of an opinion, advice or recommendation obtained for the deliberative processes involved in the functions of an agency (**deliberative matter**), that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if access to it would be against the public interest.

Deliberative matter

Document 4 consists, in part, of discussion of the deliberative processes used by the Department and the Minister in relation to the Registration of Interest filtering under the UNGI program, thereby effectively setting out the thinking processes of the Department in this context.

Accordingly, I consider Document 4 consists in part of deliberative matter, consistent with the definitions of "deliberative matter" put forward in *Re JE Waterford and Department of Treasury (No 2)* [1984] AATA 67 and *Dreyfus and Secretary Attorney-General's Department (Freedom of Information)* [2015] AATA 962.

I am therefore satisfied that the relevant part of Document 4 is conditionally exempt under section 47C of the FOI Act.

Whilst I have identified factual material within the relevant part of the document, 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 relevant part of the document to form part of the deliberative matter.

I will now consider whether access to this deliberative matter would be contrary to the public interest.

Contrary to the public interest

To determine whether access to the conditionally exempt deliberative matter would be contrary to the public interest, I must consider those public interest factors favouring access to the deliberative matter 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 deliberative matter 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 the deliberative matter that forms Document 4 in part:

- a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (section 3(1)(b)) and that the information is a national resource (section 3(3));
- b) would grant some insight into a matter of public importance;
- c) would promote effective oversight of public expenditure; and
- d) would not allow a person, being the applicant, further access to his or her own personal information.

However, I consider that the above interests are outweighed by the public interest factors against disclosure. In my view, the release of the relevant part of Document 4 would impact adversely on the ability of Department to efficiently and effectively engage in the future, both internally and within government more broadly, to develop and implement government programs in consultation with relevant Ministers.

After considering the public interest factors favouring access and those against access, I consider the factors against access to outweigh those favouring access, and that access to the deliberative matter discussed above would be contrary the public interest.

I have therefore decided to withhold access to the deliberative matter that forms Document 4 in part pursuant to section 47C of the FOI Act.

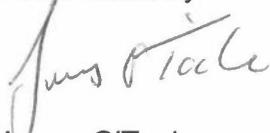
Disclosure Log

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.

Yours sincerely



James O'Toole
Assistant Secretary
Department of the Environment and Energy

24 October 2019

ATTACHMENTS:

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



Australian Government

Department of the Environment and Energy

ATTACHMENT A

FOI 190916 Schedule of Documents

No	Description	Decision
1	UNGI Registration of Interest Delta - Vales Point Power Station Efficiency Upgrade Project	<i>Exempt in full</i> Section 45 – material obtained in confidence
2	Email correspondence Subject: UNGI	<i>Release in part</i> Section 22 - personal information of government officers, material irrelevant to scope Section 34(3) – material contains Cabinet decision or deliberation
3	Excel spreadsheet Filtered ROI submission list	<i>Release in part</i> Section 22 - personal information of government officers, material irrelevant to scope Section 45 – material obtained in confidence
4	File Note Re: Registration of Interest Filtering	<i>Release in part</i> Section 22 - personal information of government officers, material irrelevant to scope Section 34(3) – material contains Cabinet decision or deliberation Section 47C – material includes deliberative processes



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

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