



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/026/IR

**INTERNAL REVIEW DECISION AND REASONS
UNDER SECTION 54 OF
THE FREEDOM OF INFORMATION ACT 1982**

REQUEST BY: Andrew

DECISION BY: John Reid
First Assistant Secretary
Government Division

By email: foi+request-6119-1bd5857d@righttoknow.org.au

Dear Andrew

I refer to your request, dated 3 March 2020, seeking internal review of the decision (the **primary decision**) made on 3 March 2020 by Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet (the **Department**) in relation to your request, dated 2 February 2020 for access under the *Freedom of Information Act 1982* (the **FOI Act**) in the following terms:

Under the FOI Act 1982, I request the report by PM&C Secretary Phil Gaetjens into ministerial conflicts of interest and the Ministerial Code of Conduct with regards to the Sport Australia Community Sports Infrastructure Program, as supplied to the Prime Minister in February 2020.

The primary decision refused access to the document you requested (the **requested document**) under sections 34(1) and 34(3) of the FOI Act (Cabinet documents).

Under section 54(2) of the FOI Act, an applicant is entitled to apply for an internal review of a decision refusing to give access to a document in accordance with a request.

Authorised decision maker

Section 54C(2) of the FOI Act provides that an agency must arrange for a person (other than the person who made the original decision) to review the decision.

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Internal review decision

I am satisfied that the requested document is exempt from release, in full, under sections 34(1) and 34(3) of the FOI Act (Cabinet documents). The effect of my decision is to affirm the primary decision.

In reaching my decision I have had regard to:

- the terms of your request;
- the primary decision;
- your request for internal review of 3 March 2020;
- the requested document;
- the FOI Act;
- the 'Guidelines issued by the Australian Information Commissioner under section 93A of the *Freedom of Information Act 1982*'¹ (the **FOI Guidelines**).

Reasons

Cabinet documents (section 34 of the FOI Act)

Section 34 of the FOI Act provides that:

- (1) *A document is an exempt document if:*
- (a) *both of the following are satisfied:*
- (i) *it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
- (ii) *it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
- ...
- (3) *A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

I note that sections 34(1)(a) and 34(3) of the FOI Act are separate and independent grounds on which a document may be exempt.

Section 4 of the FOI Act provides that:

Cabinet includes a committee of the Cabinet.

¹ FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

I am satisfied that the requested document meets the requirements of section 34(1)(a) of the FOI Act, as that document:

- was submitted to the Governance Committee of Cabinet; and
- was brought into existence for the dominant purpose of submission for consideration by the Governance Committee of Cabinet.

Separately and in addition to my finding that the request document is exempt from release, in full, under section 34(1)(a) of the FOI Act, I am also satisfied that the requested document is exempt from release, in full, under section 34(3) of the FOI Act.

This is on the basis that the requested document contains information which, if disclosed, would reveal Cabinet deliberations or decisions, and those Cabinet deliberations or decisions have not been disclosed. I have had regard to public statements made by the Prime Minister in relation to the matter, and I do not consider that disclosure of Cabinet deliberations or decisions contained in the requested document has occurred.

Accordingly, I am satisfied that the primary decision correctly found that the requested document is exempt from release, in full, under sections 34(1)(a) and 34(3) of the FOI Act.

I have therefore decided to affirm the primary decision.

Review rights

Information about your rights of review under the FOI Act is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.



John Reid
First Assistant Secretary
Government Division

2 April 2020