



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

FOI reference number: 20-118

Mr Jeremy Cooper-Stout
via Right to Know
Foi+request-6303-76333e03@righttoknow.org.au

Dear Mr Cooper-Stout

Decision made under the Freedom of Information Act 1982 – Release in part

I refer to your request to the Department of Infrastructure, Transport, Regional Development and Communications (**department**) received on 22 April 2020 for access to documents under the *Freedom of Information Act 1982 (FOI Act)*. You requested the following documents:

- (a) all meeting records of the Joint Commonwealth and Tasmanian Economic Council after 20 April 2017;*
- (b) any meeting records of the Joint Commonwealth and Tasmanian Economic Business Members Group;*
- (c) any internal departmental documents regarding scheduling of meetings of the two bodies referenced in (a) and (b); and*
- (d) any internal documents referencing the review of the terms of reference for the JCTEC.*

Authority

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the department in accordance with s 23(1) of the FOI Act.

Documents subject to this request

The department has undertaken a search of its records and has identified twenty-six (26) documents that fall within the scope of your request.

Decision

I have made a decision to release the documents relevant to your request in part. My decision regarding each document is set out in the attached Schedule, and is indicated on the documents attached. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the FOI Act.

During the processing of your request the department also consulted third parties potentially affected by the release of the documents.

Reasons for decision

In accordance with section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to the documents follows.

I have taken the following material into account in making my decision:

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);
- sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth;
- comments provided by relevant third parties affected by the release of documents; and
- the following provisions of the FOI Act:
 - section 22 access to edit copies with exempt or irrelevant material deleted;
 - section 47B Commonwealth-State relations;
 - section 47C Deliberative processes; and
 - section 47F Personal Privacy.

Statement of reasons

I have decided to refuse access, or grant partial access to documents within the scope of your request in accordance with the following exemptions in the FOI Act:

Conditional Exemptions

Where a document is assessed as conditionally exempt, the agency or minister must give access to it unless in the circumstances access would, on balance, be contrary to the public interest (s.11A(5)). The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

Commonwealth-State relations (section 47B)

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure of the document:

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

The documents marked as partially exempt under this provision contain information that if released could cause damage to the relationship between the Commonwealth and Tasmanian governments. Due to the nature of the information and the purposes for which it was provided, if released it could reasonably be seen to impact the level of information sharing and voluntary exchange of information and Tasmanian decisions and decision making processes. I am of the view that releasing the information may cause damage to the current and future working relationship between this department and the Tasmanian government and could impair the ability to obtain similar information in the future if the information was released.

Accordingly, I have decided that the documents listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- (a) disclosure would promote the objects of the FOI Act;
- (b) disclosure would inform debate on a matter of public importance;
- (c) disclosure would promote effective oversight of public expenditure; and
- (d) disclosure would allow a person to access his or her personal information.

I agree that disclosure would promote the objects of the FOI Act.

I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

I also considered the following factors which do not favour disclosure:

- (a) disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State;
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and

As set out in section 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- (d) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Deliberative processes (section 47C)

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclosure matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involve in the functions of an agency, a Minister or the Government of the Commonwealth.

In order to determine whether a document is conditionally exempt the Guidelines issued by the Oaic explain that:

For each of the conditional exemptions, the harm threshold that must be reached is specified in the provision. The various harm thresholds vary in both the extent of the harm that disclosure would cause and the extent to which the decision maker must be satisfied that the harm would result. The only exemption is the deliberative processes exemption (s47C), which does not include any requirement of harm: the threshold requirement is that the document includes deliberative matter.

The Guidelines issued by the OAIC state that:

A deliberative process involves the exercise of judgement in development and making a selection from different options: The action of deliberating in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom of expediency of a proposal, a particular decision or a course of action.

The documents marked as exempt under Section 47C in Schedule 1 contain opinions, advice and options put forth by departmental staff, Tasmanian Government officials and Joint Commonwealth Tasmanian Economic Council (JCTEC) Business Members. The information is considered to be deliberative in nature and if the information were released it could reasonably be expected to provide insight into the internal deliberations the department and Tasmanian officials undertake as part of its policy role relating to the JCTEC and JCTEC Business Members Group.

To be conditionally exempt under this provision, the deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth. I am satisfied that the deliberative material does relate to the functions of the department and the Commonwealth, specifically to the management of the JCTEC and JCTEC Business Members Group.

Accordingly, I have decided that the documents that are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- (a) disclosure would promote the objects of the FOI Act;
- (b) disclosure would inform debate on a matter of public importance;
- (c) disclosure would promote effective oversight of public expenditure; and
- (d) disclosure would allow a person to access his or her personal information.

I agree that disclosure would promote the objects of the FOI Act. I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the personal information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

I also considered the following factors which do not favour disclosure:

- a) disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, a Minister or the Government of the Commonwealth; and
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

As set out in section 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- (d) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Personal Privacy (section 47F)

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The documents marked as partially exempt under this provision contain the personal information, including the names, mobile phone numbers, and other personal particulars of individuals. This information is not public knowledge and I see no public purpose in disclosing the personal information. I do not consider it appropriate to disclose personal information where it is not otherwise available. If this information were disclosed there is a reasonable expectation that these details could be subject to misuse, contrary to the wishes of the individuals.

Accordingly, I have decided that parts of the documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test:

Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- (a) disclosure would promote the objects of the FOI Act;
- (b) disclosure would inform debate on a matter of public importance;
- (c) disclosure would promote effective oversight of public expenditure; and
- (d) disclosure would allow a person to access his or her personal information.

I agree that disclosure would promote the objects of the FOI Act. I do not consider that disclosure would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the personal information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

I also considered the following factors which do not favour disclosure:

- a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- (b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

As set out in section 11B(4) of the FOI Act, the following factors must not be taken into account in deciding whether access to the document would on balance, be contrary to the public interest:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss in confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- (d) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act.

On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Irrelevant material

Where the giving of access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access, section 22(1) of the FOI Act provides that it is possible for an agency to prepare an edited copy of the document, modified by deletions. Accordingly, irrelevant material has been redacted from the documents.

In this case I consider irrelevant material to be names and contact information of departmental employees below the SES level and information that is not relevant to the scope of your request.

Publication of information in the FOI disclosure log

Section 11C of the FOI Act requires publication of released documents on the Department's online FOI disclosure log, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable. I have decided that the documents released will be published on the disclosure log.

Your rights of review

If you wish to seek an internal review, you must apply to the Department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to FOI@infrastructure.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the Department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contacts

If you wish to discuss this matter, please contact the Department's FOI Coordinator on (02) 6274 7393 or via email at FOI@infrastructure.gov.au

Yours sincerely



Joe Castellino
Assistant Secretary
COVID Regional Recovery & Fund

17 July 2020



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

FOI

Schedule 1

Schedule of documents

Applicant: Jeremy Cooper-Stout

Decision date: July 2020

FOI reference number: 20-118

Documents:

Meeting records of the Joint commonwealth and Tasmanian Economic Council (JCTEC) after 20 April 2017; meeting records of the JCTEC Business Members Group; any internal departmental documents regarding scheduling of meetings of the two bodies and any internal documents referencing the review of the terms of reference for the JCTEC.

Document reference	Date of document	Author	Recipient	Document description	Decision	Exemption provision
1	04/05/2017	Treasury (TAS)	Department	JCTEC Terms of Reference - Comments	Exempt in full	Section 47B
2	10/2017	Department	Department	JCTEC Terms of Reference	Exempt in full	Section 47B
3	11/08/2017	Treasury (TAS)	Department	Email: JCTEC; Attachments: Draft Minutes and actions arising – 20 March 2017 – TAS comments, JCTEC – actions arising from 20 April 2017 meeting, JCTEC – potential Business Member Group agenda items	Release in part	Sections 22, 47B, 47C and 47F

4	17/08/2017	Treasury (TAS)	Department	Suggested Agenda	Exempt in full	Section 47C
5	25/08/2017	Department	Department	Draft Agenda	Exempt in full	Section 47C
6	01/09/2017	Department	Department	Draft Agenda	Exempt in full	Section 47C
7	06/07/2018 to 23/08/2018	Department	JCTEC BMG Members	Emails: FW: Joint Commonwealth and Tasmanian Economic Council – Business Members Group – 14 September 2018; Attachment: draft agenda 14 September 2018	Release in part	Sections 22, 47B and 47F
8	20/07/2018 to 16/08/2018	Department	Treasury (TAS)	Emails: FW: CM (TRIM): Business Members Group advising the JCTEC – proposed meeting with Minister McVeigh	Exempt in full	Section 47B
9	06/08/2018	Department	JCTEC BMG Members	Emails: FW: Joint Commonwealth and Tasmanian Economic Council – Business Members Group	Release in part	Sections 22 and 47F
10	06/08/2018 to 11/09/2018	Department	Department; JCTEC BMG Members	Emails: RE: Joint Commonwealth and Tasmanian Economic Council – Business Members Group meeting	Release in part	Sections 22 and 47F
11	11/09/2018	JCTEC BMG Member	Department	Email: RE: Joint Commonwealth and Tasmanian Economic Council – Business Members Group meeting	Release in part	Sections 22 and 47F
12	11/09/2018	JCTEC BMG Member	Department	Email: RE: Joint Commonwealth and Tasmanian Economic Council – Business Members Group meeting	Release in part	Sections 22 and 47F
13	23/08/2018 to 27/08/2018	Department	Treasury (TAS)	Emails: RE: CM (TRIM): JCTEC Business Members Group – draft agenda	Exempt in full	Section 47B
14	30/08/2018	Department	Minister's Office; Department	Email: Joint Commonwealth Tasmanian Economic Council Attachments: Signed amended brief; signed correspondence	Release in part	Sections 22, 47B, 47C and 47F
15	07/09/2018	Department	Minister's Office	Emails: FW: JCTEC info; Attachments: Correspondence	Exempt in full	Section 47C
16	12/09/2018 to 28/09/2018	Department	Department	Emails: Seeking confirmation from DPMO: DPMO's Visit to Burnie 6/10	Release in part	Sections 22, 47B, 47C and 47F
17	08/02/2019 to 11/02/2019	Department	Department; PM&C	Emails: RE: JCTEC	Exempt in full	Section 47B
18	12/02/2019 to 15/02/2019	Department	Department	Emails: RE: JCTEC and Business Members Group Meetings	Release in part	Sections 22, 47B and 47F
19	19/02/2019 to 23/02/2019	Department	Treasury (TAS)	Emails: RE: JCTEC Business Members Group meeting – proposed date; Attachment: Combined Sitting Schedule 2019	Release in part	Sections 22, 47B and 47F
20	20/02/2019 to 21/02/2019	Department	Department	Emails: FW: JCTEC Business meeting	Release in part	Section 22 and 47B
21	04/03/2019	Department	Department	Emails: FW: Meeting of the Business Members Group of the Joint Commonwealth and Tasmanian Economic Council – proposed for 13 March 2019, Hobart – 9-10.30am	Release in part	Sections 22 and 47B

22	04/03/2019 to 06/03/2019	Department	JCTEC Business Members Group; Department	Emails: RE: JCTEC Business Members Group – meeting 13 March 2019 – 9-10.30n am	Release in part	Sections 22, 47B and 47F
23	04/03/2019 to 06/03/2019	Department	Department	Emails: RE: Possible JCTEC meeting 20 March – DPM's availability	Release in part	Sections 22 and 47B
24	06/03/2019	Treasury (TAS)	Department	Email: JCTEC Business Members meeting; Attachment: JCTEC Business Members Group Meeting Agenda 13 March 2019 – Tasmanian comments	Release in part	Sections 22, 47C and 47F
25	13/03/2019	Department	Department; JCTEC BMG	JCTEC Business Members Group Minutes – March 2019 - Final	Exempt in full	Section 47B
26	29/03/2019	Department	Department; PM&C	Emails: RE: JCTEC meeting post Budget	Exempt in full	Section 47B