



Mr John Smith

Via email: foi+request-6327-718b603e@righttoknow.org.au

Dear Mr Smith

Your Freedom of Information request – decision

I refer to your revised request, received by the Department of Agriculture, Water and the Environment (**department**) on 28 May 2020 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

‘a copy of all emails in which this transaction [the Eastern Australia Agriculture’s 2017 sale of water rights to the department] has been discussed by SES-level staff within the department (including deleted or archived emails). Please exclude emails that were not sent or received [sic] by an SES level public servant from the FOI request. To make this part of the FOI request feasible, please restrict this request to only encompass emails that contain either 'Eastern Australian Irrigation' or the acronym 'EAI' as an exact term within the email. (This should make it possible to do a simple electronic search for emails within the department's database).’

My decision

The department holds 3 documents (totalling 8 pages) that relate to your request.

I have decided to:

- grant you **full access** to 1 document (document 3); and
- grant you **part access** to 2 documents (documents 1 and 2) with some of the content removed.

I have decided that parts of documents that you have requested are exempt under the FOI Act as the information is personal information about other people.

On 18 May 2020 the department acknowledged your request and advised you that we would not include personal details about our staff. You did not contact the department again about this. Staff details have therefore been deleted in accordance with section 22(1) of the FOI Act.

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents.

What I took into account

In reaching my decision, I took into account:

- your original request dated 2 May 2020 and your revised request on 28 May 2020;
- the documents that fall within the scope of your request;

- information about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that certain parts of documents that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to those documents are discussed below.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to third party email and phone numbers contained in documents 1 and 2

Section 47F of the FOI Act relevantly provides:

- '(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (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 the agency or Minister considers relevant.'

Personal Information

The term 'personal information' is defined as follows:

- '...information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in a material form or not.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

I find that documents 1 and 2 contain personal information of other people. This includes their email and phone numbers.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.127 of the Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

I am satisfied that the disclosure of the third party personal information would be unreasonable as the information is private and not available in full or in part from publicly-accessible sources;

On this basis, I have decided that the personal information included in documents 1 and 2 is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

'The agency or Minister 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 at that time would, on balance, be contrary to the public interest.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.

Based on the above factors, I have decided that in this instance, the disclosure of the documents would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

How we will send your documents to you

The documents are attached.

You can ask for a review of my decision

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@agriculture.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.

Further assistance

If you have any questions, please email foi@agriculture.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Dadswell', written in a cursive style.

Matthew Dadswell
Assistant Secretary
Water Division
13 November 2020



LIST OF DOCUMENTS FOR RELEASE

LEX-4161

Doc No.	Pages	Description	Decision	Exemption	Comments
1.	1-2	Email correspondence	Release in part	S 47F	Page 1: personal information deleted under s 47F(1) Page 1: out of scope material deleted under s 22
2.	3-5	Email correspondence	Release in part	S 47 F	Page 4-5: personal information deleted under s 47F(1) Page 3-4: out of scope material deleted under s 22
3.	6-8	Email correspondence	Release in full		Page 6: out of scope material deleted under s 22

