



29 September 2020

J M

Sent via email: [foi+request-6559-2367b05b@righttoknow.org.au](mailto:foi+request-6559-2367b05b@righttoknow.org.au)

Dear J M

**Your Freedom of Information Request sent on 31 July 2020**

I refer to your 31 July 2020 FOI request under the *Freedom of Information Act 1982* (the FOI Act) as follows:

*"I am requesting full disclosure of the document "Fundamental Safety Principles For Protection Against Non-Ionizing Radiation" and all drafts/amending documents associated with it.*

*I am requesting this information in response to D0019 where all draft copies of this document were redacted under section 33*

*wherein the release of documents, it is cited that redaction of the drafts were made due to:  
Section 33 of the FOI Act - Documents affecting national security, defence or international relations*

*I do not agree with this assessment, as renewed public interest in 5G technology has gained momentum, due to the Australian Public being on the cusp of the rollout. It will be better for the public to know the full workings of intergovernmental discussions pertinent to new and emerging technologies - where the health effects and interference vectors are crucial to the public's understanding due to limited technical/researched information being available, as of this point in time.*

*I believe it is in the public's interest to be made aware of the working processes of the government's assessment of 5G technology. Specifically the scientific preliminary working materials.*

*I see no reason subsequent release of this documentation will in any way affect the working relationships of partnered WHO members, nor will it affect the WHO itself or national security. Furthermore, if there is reason to believe the public's response will in-fact hinder these relationships - it is not a valid reason to retain privacy classification.*

*The decision maker is not required to consider the public interest test (s 11A(5)) until they have first determined that the document is conditionally exempt. A decision maker cannot withhold access to a document simply because it conditionally exempt. Disclosure of conditionally exempt documents is required unless in the particular circumstances and, at the time of the decision, there is, on balance, countervailing harm which offsets the inherent public interest of giving access.*

*Due to the Australian public's limited understanding on this matter - it would be lawful and justified to release these documents.*

*if, however, the documents are deemed exempt regardless of public interest under :*

*1. 47G(1)(a) - I request the names of those businesses affected 2. 11A(5) - I request all liaising documents by the agency discussing the balance of public interest, and the conclusion of those assessments - including any polling/studies pertinent to the discussion/s. 3. If the continued exemption related specifically to the WHO - I request the disclosure be made with the interest of Australian citizens as a priority - first and foremost - i am not requesting information on member states, nor the identifiable names of individuals involved - more-or-less i am asking for imperial data studies, charts, drafts and preliminary working documents/reports, as information related to technical specifications and biological effects may have been removed in the lead up to the final report/s, and this information will help the public better understand the misinformation being spread rapidly, why these issues have become so widespread, and how they can better identify "fake news" in the future."*

### **Authorisation under Section 23 of the FOI Act**

I am an officer authorised under section 23 of the FOI Act to make decisions with respect to applications for access to documents under the FOI Act and this letter sets out my decision on your request.

### **Decision**

I have identified one document relevant to your request and have decided to release nil documents.

My reasons for making this decision are set out in Attachment A to this letter. At Attachment B is a schedule setting out each identified document and detailing my decision in relation to each document.

I have enclosed extracts of the provisions of the FOI Act relevant to your request and my decision at Attachment C to this letter.

### **Review Rights**

You are entitled to seek review of this decision. Your rights in this regard are set out at Attachment D to this letter.

You may also complain to the Commonwealth Ombudsman about the way your request has been handled and Attachment D also sets out your rights of complaint and how to exercise them.

### **Contacts**

If you require clarification of any of the matters set out in this letter please contact John Templeton on 02 9541 8311 or [foi@arpansa.gov.au](mailto:foi@arpansa.gov.au).

Yours sincerely

*John Templeton*

John Templeton  
Privacy and FOI Officer  
Office of the General Counsel



## ATTACHMENT 'A' – REASONS FOR DECISION

### Material taken into account

In making my decision, I considered the following information:

- The relevant provisions of the FOI Act;
- Guidelines on FOI, available on the Office of the Australian Information Commissioner website (OAIC Guidelines);
- The terms of your request and the content of the documents to which you sought access;
- Third party consultation with the World Health Organisation;

### Searches conducted

A search was undertaken of ARPANSA records management system, which identified the draft *Fundamental Safety Principles for Protection Against Non-Ionizing Radiation* (Fundamental Safety Principles).

### Consultation

ARPANSA consulted with the World Health Organisation (WHO) under section 15(7) of the FOI Act in relation to the release of the draft *Fundamental Safety Principles for Protection Against Non-Ionizing Radiation* (Fundamental Safety Principles) document.

The WHO objected to the release of the draft Fundamental Safety Principles on the basis that it would divulge confidential communications between the WHO and the officials of the national agencies of the WHO Member States which would be prejudicial to the work undertaken by the member states and ultimately the WHO.

### Findings of fact and reasons for decision

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that document or part of document are set out below.

### Section 22 of the FOI Act - deletion of exempt matter or irrelevant material

Section 22 of the FOI Act allows for the deletion of information which is either exempt or which is irrelevant to the scope of the request

### Section 22(1)(a) of the FOI Act – material which is exempt or irrelevant

Where a decision is made to refuse access to a document on the ground that it is an exempt document or that it contains irrelevant material, section 22 allows an agency to make an edited copy of the document with the exempt or irrelevant material deleted.

## Exemptions

The schedule of documents identifies the relevant section of the FOI Act under which exemptions have been asserted in respect of the document. My reasons for finding particular exemptions are set out below.

### Section 33 of the FOI Act - Documents affecting national security, defence or international relations

Section 33 exempts documents that affect Australia's national security, defence or international relations.

The OIAC Guidelines provide that the phrase 'international relations' has been interpreted to mean the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them.

A document is exempt under section 33 if disclosure:

- (a) would, or could reasonably be expected to, cause damage to the Commonwealth's security, defence or international relations; or
- (b) disclosure would divulge information communicated in confidence to the Commonwealth by a foreign government, an agency of a foreign government or an international organisation.

I have made a decision to exempt the draft Fundamental Safety Principles document on the basis of:

- 33 (b) of the FOI Act, that is, disclosure would divulge information communicated in confidence to the Commonwealth by an international organisation.

In May 1996, the WHO launched the International EMF Project to assess the health and environmental effects of exposure to electromagnetic fields. Oversight of the Project is provided by an International Advisory Committee (IAC). ARPANSA is officially involved in the International EMF Project as a member of the IAC and as a WHO Collaborating Centre in the area of non-ionizing radiation. In this role, ARPANSA has been asked to provide expert opinion on the first draft of the Fundamental Safety Principles.

The first draft of the Fundamental Safety Principles document was prepared by the WHO and was sent to IAC members including ARPANSA on a confidential basis. This document is not publically available.

The WHO was consulted as part of processing this FOI and has objected to the release of the Fundamental Safety Principles document before it is finalised on the basis that it would divulge confidential communications between the WHO and the officials of the national agencies of the WHO Member States which would be prejudicial to the work undertaken by the member states and ultimately the WHO.

The release of the Fundamental Safety Principles document which was sent to ARPANSA on the shared understanding that it was confidential could reasonably be expected to both impede the future flow of confidential information from international organisations and damage the Australian government's ability to maintain a good working relationship with the WHO.

I have taken into consideration OIAC Guidelines issued under section 11B(5) of the FOI Act.

- The disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future.<sup>1</sup>

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<sup>1</sup> *Re Maksimovic and Attorney-General's Department* [2008] AATA 1089. See also *O'Sullivan and Department of Foreign Affairs and Trade* [2013] AICmr 36 and *'AA' and Bureau of Meteorology* [2013] AICmr 46.

- The exemptions in Division 2 of Part IV, which includes section 33 exempt documents, are not subject to an overriding public interest test. If a document meets the criteria to establish a particular exemption, it is exempt. There is no additional obligation to weigh competing public interests to determine if the document should be released.

Section 33(b) exempts information communicated in confidence to the Australian Government or agency by an international organisation. The draft Fundamental Safety Principles document was communicated in confidence between the WHO and ARPANSA. There was a shared understanding that the communication would be kept confidential.



**ATTACHMENT B – SCHEDULE OF RELEVANT DOCUMENTS**

<b>Doc No.</b>	<b>Document</b>	<b>Decision</b>	<b>FOI Act Section</b>
1	Draft Fundamental Safety Principles For Protection Against Non-Ionizing Radiation	Exempt in full	s.33



## ATTACHMENT C – RELEVANT FOI ACT PROVISIONS – 29 September 2020

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

#### *Exemptions and conditional exemptions*

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) 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.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
  - (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

## 11C Publication of information in accessed documents

### *Scope*

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
  - (a) personal information about any person, if it would be unreasonable to publish the information;
  - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
  - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
  - (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

### *Publication*

- (3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
  - (a) making the information available for downloading from the website; or
  - (b) publishing on the website a link to another website, from which the information can be downloaded; or
  - (c) publishing on the website other details of how the information may be obtained.

## 22 Access to edited copies with exempt or irrelevant matter deleted

### *Scope*

- (1) This section applies if:
  - a. an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - b. it is possible for the agency or Minister to prepare a copy (an ***edited copy***) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - c. it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - d. it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

### *Access to edited copy*

- (2) The agency or Minister must:
  - a. prepare the edited copy as mentioned in paragraph (1)(b); and



- b. give the applicant access to the edited copy.

*Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - a. that the edited copy has been prepared; and
  - b. of the grounds for the deletions; and
  - c. if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

### **31B Exempt documents for the purposes of this Part**

A document is *exempt* for the purposes of this Part if:

- a. it is an exempt document under Division 2; or
- b. it is conditionally exempt under Division 3, and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note 1: A document is an *exempt document* for the purposes of this Act (see subsection 4(1) if:

- a. it is exempt under this section; or
- b. it is exempt because of section 7 (exemption of certain persons and bodies); or
- c. it is an official document of a Minister that contains matters not relating to the affairs of an agency or a Department of State.

Note 2: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

### **33 Documents affecting national security, defence or international relations**

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:
  - (i) the security of the Commonwealth;
  - (ii) the defence of the Commonwealth; or
  - (iii) the international relations of the Commonwealth; or
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.



## ATTACHMENT D INTERNAL REVIEW OF DECISION BY ARPANSA

You have the right to apply for an internal review of this decision in accordance with Part VI of the *Freedom of Information Act 1982* (FOI Act). If you make an application for review, the CEO of ARPANSA will appoint an officer of ARPANSA to conduct a review and make a completely fresh decision on the merits of the case.

If you wish to exercise this review right, you must apply in writing for a review of the decision within 30 days of receipt of this letter. You do not have to pay any fees or proceeding charges for internal the review. No particular form is required to apply for review although it is desirable to set out in the application the grounds on which you consider that the decision should be changed.

The application for review of the decision should be sent to [foi@arpansa.gov.au](mailto:foi@arpansa.gov.au) or:

FOI & Privacy Officer  
ARPANSA  
619 Lower Plenty Road  
YALLAMBIE VIC 3085

If you make an application for internal review and a decision is not made by us within 30 days of receiving the application, the original decision will be deemed to be affirmed in accordance with section 54D of the FOI Act and you will be entitled to make an application to the Information Commissioner in accordance with sections 54L and 54M of the FOI Act. Similarly, if you are dissatisfied with ARPANSA's decision on internal review, you may also apply for review of this decision to the Information Commissioner.

### Review of Decision by the Australian Information Commissioner (AIC)

You do not have to seek an internal review of the decision directly from ARPANSA. You may wish to seek a review of the decision from the AIC. If so, you must apply in writing and you can lodge your application in a number of ways. More information is available on the AIC's website at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

### Complaints to the AIC or the Commonwealth Ombudsman

You may complain to the Commonwealth Ombudsman or the AIC concerning action taken by an agency in the exercise of the powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Ombudsman or the AIC will conduct a completely independent investigation of your complaint.

You may complain to the Ombudsman either orally, in person, on-line or in writing and to the AIC in writing or by completing the on-line form. Relevant addresses are:

Commonwealth Ombudsman GPO Box 442 CANBERRA ACT 2601.  Web: <a href="http://www.ombudsman.gov.au">www.ombudsman.gov.au</a>	The Australian Information Commissioner GPO Box 2999 <b>OR</b> GPO Box 5218 Canberra ACT 2601    Sydney NSW 2001  Web: <a href="https://www.oaic.gov.au/freedom-of-information/foi-complaints">https://www.oaic.gov.au/freedom-of-information/foi-complaints</a>
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