



**Internal review decision made under the *Freedom of Information Act 1982***

Internal review decision and reasons for decision of Lyn O’Connell, Deputy Secretary,  
Department of Infrastructure and Regional Development

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**Applicant:** Mr Ben Fairless

**Agency:** Department of Infrastructure and Regional Development

**Date of original decision:** 29 July 2014

**Internal review decision date:** August 2014

**FOI reference number:** IR 15-05

**Documents:** IPv4 and IPv6 addresses

**Contents**

Summary ..... 2

Authority to make this decision ..... 2

Background ..... 2

Documents subject to this request ..... 2

Decision ..... 2

    Reasons for decision ..... 2

    Statement of Reasons ..... 3

Your rights of review ..... 4

*Information Commissioner review* ..... 4

Contacts ..... 4

Schedule 1: Schedule of relevant provisions in the FOI Act ..... 5

## Summary

1. I have made a decision to affirm the original decision made by David Banham, Chief Operating Officer not to release any documents subject to your request as they do not exist.

## Authority to make this decision

2. I, Lyn O'Connell, Deputy Secretary, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 16 July 2014 you made a request for access to documents in the possession of the Department. Your request sought access to:

*"...records detailing the IPv4 (and if relevant, IPv6) addresses used to access the public internet from within your network.*

*To clarify, these are the public facing addresses of your private network. I am only requesting addresses that are used to access the general public internet.*

*In addition, if it is such that a particular IP address serves a particular area within your department (for example, one IP address is used for Media Relations, while another is used for Ministerial Communications), I also request access to this information."*

4. On 31 July 2014 you were provided with a decision relating to access to documents within scope of your request. The documents relevant to your request were found not to exist, as such your request was refused in accordance with section 24A of the FOI Act.
5. On the same date you requested an internal review of the decision to refuse your request under section 24A of the FOI Act on the basis that documents do not exist.

## Documents subject to this request

6. I have reviewed the scope of your FOI request and am satisfied that the documents you are seeking access to do not exist.

## Decision

7. In accordance with section 24A, I have made a decision that documents subject to your request do not exist or cannot be found.

## Reasons for decision

8. 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 refuse your request follow.
9. In making my decision, I had regard to sections 3, 11 and 11A, which give the Australian community a legally enforceable right to obtain access to information held by the Government. I also considered the following provisions of the FOI Act relevant to my decision:

section 24A requests may be refused if documents cannot be found, do not exist or have not been received.  
section 4 Interpretation - *document*

10. A full extract of all provisions I used to make my decision are provided in Schedule 1.

### Statement of reasons

11. As detailed above, your FOI request sought access to:

*"...records detailing the IPv4 (and if relevant, IPv6) addresses used to access the public internet from within your network.*

*To clarify, these are the public facing addresses of your private network. I am only requesting addresses that are used to access the general public internet.*

*In addition, if it is such that a particular IP address serves a particular area within your department (for example, one IP address is used for Media Relations, while another is used for Ministerial Communications), I also request access to this information."*

12. Firstly, I note that the Department does not have IPv6 addresses.

13. Secondly, the Department may have IPv4 addresses which would be recorded within departmental routers, however, reading your FOI request in its entirety, the information you have sought access to does not exist in document form. The Department does not have, nor track particular IP addresses serving particular areas within the Department, whether it be a hard copy or electronic document, or *'any article on which information had been stored or recorded, either mechanically or electronically'*<sup>1</sup> or in any form outlined within section 4 of the FOI Act, do not exist.

14. Had you requested the IPv4 addresses on their own without information on which particular addresses serve particular areas of the Department, it may have been determined that the router on which this information is stored would constitute a 'document'. Please note though, for the Department to retrieve the IP address and eliminate information which is irrelevant to the IPv4 addresses would likely result in an unreasonable diversion of departmental resources due to the volume of information likely to be retrieved.

15. Further, if this information were readily available in document form, it is considered that release of the information would reasonably be expected to cause damage to the security of the Commonwealth, in so far as it would provide individuals or groups with malicious or mischievous intentions with an avenue of accessing departmental systems. As such, the information would likely be exempt in accordance with section 33(a)(i) of the FOI Act.

16. It is also considered that release of such information would reasonably be expected to allow individuals or groups with malicious or mischievous intentions to target their activities in relation to government networks. I consider that such malicious or mischievous activities could reasonably be expected to have a substantial and adverse effect on the proper and efficient conduct of the operations of the Department. As such, the information would also likely be exempt in accordance with section 47E(d) of the FOI Act.

17. Notwithstanding my views on the likelihood of documents being exempt, if they existed, were you to revise the scope of your FOI request to include only the IPv4 addresses, a separate decision would be made on the release of such documents.

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<sup>1</sup> *Freedom of Information Act 1982, section 4 – document (a)(v)*

## Your rights of review

### *Information Commissioner review*

18. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
19. You can ask the OAIC to review the Department's decision.
20. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
21. You must apply in writing and you can lodge your application in one of the following ways:
  - Online:** <[www.oaic.gov.au](http://www.oaic.gov.au)>
  - Post:** Office of the Australian Information Commissioner  
GPO Box 2999, Canberra ACT 2601
  - Facsimile:** (02) 9284 9666
  - Email:** <[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)>
  - In person:** Level 3, 175 Pitt Street, Sydney, NSW 2000
22. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <[www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights)>.

### **Contacts**

23. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at <[foi@infrastructure.gov.au](mailto:foi@infrastructure.gov.au)>.



Lyn O'Connell  
Deputy Secretary  
Department of Infrastructure and Regional Development

26 August 2014



## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

**document** includes:

  - (a) any of, or any part of any of, the following things:
    - (i) any paper or other material on which there is writing;
    - (ii) a map, plan, drawing or photograph;
    - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
    - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
    - (v) any article on which information has been stored or recorded, either mechanically or electronically;
    - (vi) any other record of information; or
  - (b) any copy, reproduction or duplicate of such a thing; or
  - (c) any part of such a copy, reproduction or duplicate; but does not include:
  - (d) material maintained for reference purposes that is otherwise publicly available; or
  - (e) Cabinet notebooks.

### 11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.

- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

## **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).

## **11B Public interest exemptions—factors**

### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (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.

### *Irrelevant factors*

- (4) 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 of 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 document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## **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.

**23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

**24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

*Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

**26 Reasons and other particulars of decisions to be given**

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
  - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and



- (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

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

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
  - (c) give to the applicant appropriate information concerning:
    - (i) his or her rights with respect to review of the decision;
    - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
    - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.  
(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.

### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

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