



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

Ray Willing  
Via email: [foi+request-7669-36c97a08@righttoknow.org.au](mailto:foi+request-7669-36c97a08@righttoknow.org.au)

FOI reference number: 22-020

Dear Ray,

**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 (**the department**) received on 8 August 2021 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**). You requested the following documents:

*all details you have with Coffs Harbour City Council concerning the financing of and the proposed design of a Whale Trail to be located at Woolgoolga NSW.*

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

**Documents subject to this request**

The department has undertaken a search of its records and has identified ten (10) documents that fall within the scope of your request. These documents are set out in the attached schedule.

**Decision**

I have made a decision to release the documents relevant to your request in part. The documents that I have chosen to grant access to in part are set out in the attached schedule, together with applicable exemption provisions. 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 subsection 22(2) of the FOI Act.

**Reasons for decision**

In accordance with paragraph 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 content of the documents that fall within the scope of your request;
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the FOI Guidelines**);
- sections 3, 11 and 11A 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 of a third party potentially affected by the release of the documents; and
- the following provisions of the FOI Act:
  - *section 47C – deliberative matter*
  - *section 47F – personal privacy*
  - *section 47G – business information*
  - *section 22 – irrelevant material.*

## Statement of reasons

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

### ***Section 47C (Deliberative matter)***

Section 47C of the FOI Act provides that a document is conditionally exempt if its 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.

The Office of the Information Commissioner FOI Guidelines (FOI Guidelines) state 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 exception is the deliberative processes exemption (section 47C), which does not include any requirement of harm: the threshold requirement is that the document includes deliberative matter.*

Further part 6.58 of the FOI Guidelines explains that:

*A deliberative process involves the exercise of judgement in developing 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 and expediency of a proposal, a particular decision or a course of action.*

The parts of the documents exempt under section 47C of the FOI Act consist of internal deliberations of the department relating to the Woolgoolga Whale Trail Community Development Grant. The information redacted in accordance with section 47C consists of internal comments and assessments which contain preliminary thinking work and options related to the project. The documents were formulated for further consideration and refinement, are deliberative in nature, and not in any way reflective of a final decision. If released, the documents could reasonably be expected to provide insight into the internal deliberations of the department in relation to Community Development Grants, and in particular the Woolgoolga Whale Trail grant.

For this exemption to apply the deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth. I can confirm the deliberative material relates to the functions of the department, in particular the material consists of internal comments about the status and progress of the Woolgoolga Whale Trail project. Accordingly, I have decided the parts of the documents partially exempt under section 47C of the FOI Act 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 subsection 11A(5) of the FOI Act.

### ***Application of the public interest test:***

Subsection 11A(5) of the FOI Act 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 own personal information.

I agree that disclosure would promote the objects of the FOI Act, may assist in a limited way to inform debate on a matter of public importance and may provide limited oversight of public expenditure.

I do not consider the information exempt under section 47C relates to the personal information of the applicant. This public interest consideration is therefore irrelevant in this instance.

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;
- b) disclosure could reasonably be expected to impact the effective and efficient management of the Community Development Grants program in the future.

As set out in subsection 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 in subsection 11B(4) of the FOI Act has been considered. 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.

### ***Section 47F – Personal privacy***

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

‘Personal information’ is defined under section 4 of the FOI Act as having the same meaning as in the *Privacy Act 1988* (Privacy Act). Subsection 6(1) of the Privacy Act defines ‘personal information’ as:

*‘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 material form or not.’*

The documents marked as partially exempt under this provision contain personal information including names, phone numbers, bank details and other personal particulars of departmental employees and Coffs Harbour City Council. This information is not in the public domain, these individuals are not known to be associated with this type of work and I see no public purpose in disclosing this information. I do not consider it appropriate to disclose personal information where it is not otherwise publicly available. If this information was disclosed there is a reasonable expectation that these details could be subject to misuse, contrary to the wishes of the individuals. The individuals that provided the information to the department were also not aware it would be disclosed further.

Accordingly, I have decided that the documents which are listed as exempt in accordance with this provision in the schedule 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 subsection 11A(5) of the FOI Act.

*Application of the public interest test:*

Subsection 11A(5) of the FOI Act 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 the personal information exempted in accordance with section 47F of the FOI Act if disclosed, would inform debate on a matter of public importance, or provide effective oversight of public expenditure. Further, the personal information redacted from the documents is not the applicant's own personal information so that public interest consideration is not relevant 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) the personal information is not well known;
- c) the persons to whom the information relates are not known to be (or to have been) associated with the matters dealt with in the documents; and
- d) the information is not available from publicly accessible sources.

As set out in subsection 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 embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- c) access to the document could result in any person misinterpreting or misunderstanding the document;
- d) 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
- e) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factors have been considered, as set out in subsection 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.

***Section 47G (Business information)***

A document is conditionally exempt if it discloses information (business information) concerning a person in respect of his or her business or professional affairs, or concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of the information:

- would, or could reasonably be expected to, unreasonably affect the person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs (paragraph 47G(1)(a)), or
- could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency (paragraph 47G(1)(b)).

I consider that, in accordance with section 47G of the FOI Act, the documents in issue contain business information relating to the commercial operations and financial affairs of the Coffs Harbour City Council. I consider that disclosure of this information would reveal information concerning the Coffs Harbour City Council in respect to the business, commercial and/or financial affairs and this would or could reasonably be expected to affect Coffs Harbour City Council adversely in respect to their lawful business, commercial and financial affairs.

I consider that the information exempt under section 47G is not publicly known and if disclosed, would unreasonably reveal sensitive commercial and financial information of Coffs Harbour City Council. This information is not in the public domain and relates to financial and operational elements of the project which are not yet finalised. Accordingly, I consider the parts of the documents marked as exempt under section 47G meet the criteria for conditional exemption under this part of the FOI Act.

*Application of the public interest test:*

Subsection 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 a debate on a matter of public importance. Notwithstanding the public interest surrounding this project, I do not consider the disclosure of commercially sensitive business information would serve the public interest where such disclosure would have an adverse effect on the business that provided this information.

I consider release of the exempt material may provide oversight of public expenditure, however I do not consider that the benefit in releasing this information would outweigh the potential adverse effects for the lawful business and/or professional affairs of the Coffs Harbour City Council.

As the information is not the personal information of the applicant this is not a relevant consideration in this instance.

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

- a) disclosure would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs;
- b) disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future, if third parties were aware that sensitive information provided to the agency was routinely released through FOI ; and
- c) disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency.

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

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

I am satisfied that no irrelevant factor has been considered, as set out in subsection 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, subsection 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.

### **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](mailto: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](http://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 6770 or via email at [FOI@infrastructure.gov.au](mailto:FOI@infrastructure.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Meghan Hibbert', with a large, sweeping flourish extending to the right.

Meghan Hibbert  
Assistant Secretary  
Regional Programs Branch  
Regional Development, Local Government & Regional Recovery Division  
5 October 2021



**Australian Government**

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

FOI

## Schedule of documents

**Applicant:** Ray Willing

**Decision date:** October 2021

**FOI reference number:** FOI 22-020

**Scope of request:** Documents relating to Woolgoolga Whale Trail.

Document reference	Date of document	Document description	Decision	Exemption provision/s
1.	24/09/21	Email trail re Additional information	Release in part	s47F, s47G, s22
2.	22/07/21	Email trail: CDG0938	Release in part	s47F, s22
3.	11/08/21	Email trail: CDG0938	Release in part	s47F, s22
4.	18/09/19	Request for information	Release in part	s47F, s22
5.	May 2019	Survey documents	Release in part	s47F
6.	01/11/18	Concept Design Report	Release in full	NA
7.	15/03/19	Letter from the Hon Michael McCormack MP to Councillor Denise Knight	Release in full (as relevant to request)	s22



8.	22/11/19	Internal Assessment		Exempt in full	s47C
9.	14/01/20	MS19-002233 – Woolgoolga Whale Trail		Release in part	s47F, s22
9.1	14/01/20	Attachment A to MS19-002233		Exempt in full	s47C
9.2	14/01/20	Attachment B to MS19-002233		Release in full	NA
9.3	14/01/20	Attachment C to MS19-002233		Release in part	s47F
10.	30/03/20	Agreement		Release in part	s47F