



Australian Government

Department of Education, Skills and Employment

Your Ref
Our Ref 45011

Tim Sherratt

By email: foi+request-8080-af93703c@righttoknow.org.au

Dear Mr Sherratt

Your Freedom of Information request - decision

I refer to your revised request, received by the Department of Education, Skills and Employment (department) on 26 November 2021, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

...the final three reports commissioned as part of the scoping study of potential research infrastructure for HASS and Indigenous research platforms.

On 8 November 2021, you made a request under the FOI Act in the following terms:

As part of the 2018 Research Infrastructure Investment Plan, funding was committed for a scoping study of potential research infrastructure for HASS and Indigenous research platforms (<https://www.dese.gov.au/national-research-infrastructure/national-research-infrastructure-scoping-studies>).

Three reports were commissioned as part of this scoping study, and recommendations drawn from these reports were included in the 2020 Research Infrastructure Investment Plan (<https://www.dese.gov.au/2020-research-infrastructure-investment-plan/resources/2020-research-infrastructure-investment-plan>).

I request that the three reports commissioned for the HASS and Indigenous research platforms scoping study be made publicly available, along with any recommendations and associated briefing notes derived from the scoping study.

On 26 November 2021, I wrote to you to advise you that it was likely that processing your request in those terms would substantially and unreasonably divert the resources of the department and I invited you to reduce the scope of your request.

Also on 26 November 2021, you revised the scope of your request to the terms outlined above.

On 6 December 2021, the department released one of the documents captured by your revised request, a report prepared by the Australian Academy of the Humanities, to you on an administrative basis (outside of the FOI Act). As the document was provided to you, the department advised you that we would treat this part of your request as withdrawn unless you advised otherwise. As we did not hear from you, we have treated this part of your request as withdrawn.

My decision

The department holds two documents (totalling 107 pages) that fall within the scope of your request.

I have decided to grant you **access in part** to the documents (documents 1 and 2) with some of the content removed.

I have decided that certain parts of the documents that you have requested are exempt under the FOI Act because they contain:

- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C conditional exemption)
- personal information, the disclosure of which would be unreasonable and contrary to the public interest (section 47F conditional exemption).

A schedule of the documents and the reasons for my decision are set out at **Attachment A**.

As foreshadowed in our letter dated 6 December 2021, during the processing of your request the department consulted third parties potentially affected by the release of the documents. One of the third parties made submissions objecting to the release of document 2. The FOI Act provides third parties with a right to seek internal review and external review by the Australian Information Commissioner of decisions to release documents if, when consulted, they object to the release of those documents. As such, and in accordance with subsection 27(7) of the FOI Act, no part of document 2 will be provided to you until the expiration of the third party's rights of review. The third party has until 14 February 2022 to seek a review of my decision and the department will contact you again once the third party's rights of review have expired.

Charge

On 6 December 2021, the department made a preliminary assessment of the charge payable to process your request in the amount of \$135.00 and received payment in full on the same day.

I have assessed the charge under regulation 10 of the *Freedom of Information (Charges) Regulations 2019* and the cost of processing your request exceeded the amount estimated. Accordingly, I have fixed the charge under this provision.

How we will send your documents

Document 1 is attached. As noted above, document 2 is withheld from release pending the expiry of third-party review rights.

You can ask for a review of my decision

If you disagree with any part of the decision, you can ask for a review. There are two ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment B**.

Further assistance

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

Yours sincerely

A handwritten signature in cursive script that reads "Alison".

Alison
Authorised decision maker
Department of Education, Skills and Employment

14 January 2022

SCHEDULE OF DOCUMENTS – Tim Sherratt

Number	Page count	Date	Description	Decision	Exemption	Comments
1.	97	31 March 2020	Australian Research Data Commons, Humanities, Arts and Social Sciences Research Data Commons Final Report	Grant access in part	s 47C s 47F(1)	Pages 43 to 49, 51 and 52: Deliberative material deleted under section 47C(1) Pages 89 to 92: Personal information deleted under section 47F(1)
2.	10	Undated	National research infrastructure investment in HASS – consultation report	Grant access in part	s 47F(1)	Page 1: Personal information deleted under section 47F(1) Document withheld pending expiry of third-party review rights pursuant to subsection 27(7).

REASONS FOR DECISION

What you requested

As part of the 2018 Research Infrastructure Investment Plan, funding was committed for a scoping study of potential research infrastructure for HASS and Indigenous research platforms (<https://www.dese.gov.au/national-research-infrastructure/national-research-infrastructure-scoping-studies>).

Three reports were commissioned as part of this scoping study, and recommendations drawn from these reports were included in the 2020 Research Infrastructure Investment Plan (<https://www.dese.gov.au/2020-research-infrastructure-investment-plan/resources/2020-research-infrastructure-investment-plan>).

I request that the three reports commissioned for the HASS and Indigenous research platforms scoping study be made publicly available, along with any recommendations and associated briefing notes derived from the scoping study.

On 26 November 2021, the department wrote to you providing a notice of intention to refuse your request under section 24AB of the FOI Act as your request was too big to process.

On 26 November 2021, you revised your request as follows:

...the final three reports commissioned as part of the scoping study of potential research infrastructure for HASS and Indigenous research platforms.

On 6 December 2021, the department advised you that it would consult with certain third parties because the requested documents contain information the third parties might reasonably wish to contend should not be disclosed.

What I took into account

In reaching my decision, I took into account:

- your original request dated 8 November 2021 and your revised request dated 26 November 2021
- the documents that fall within the scope of your request
- consultation with third parties about documents which contain information concerning them
- consultations with departmental officers about the nature of the documents and the operating environment and functions of the department
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)

- the *Freedom of Information (Charges) Regulations 2019*
- 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 the documents you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that exemptions apply to those documents are discussed below.

Section 22 of the FOI Act: access to edited copies with irrelevant matter deleted

I have decided that the documents falling within the scope of your request contain exempt material. In this regard, sections 22(1) and (2) of the FOI Act provide that:

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.

The documents identified in the Schedule of Documents include exempt material.

In accordance with section 22 of the FOI Act, I have deleted exempt material where possible from the pages identified in the Schedule of Documents and have decided to release the remaining material to you.

Section 47C of the FOI Act – Deliberative processes

I have applied the conditional exemption in section 47C(1) to document 1.

Section 47C(1) of the FOI Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act 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:

- (a) an agency

...

Paragraph 6.59 of the FOI Guidelines relevantly provides:

‘Deliberative process’ generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action

Document 1 is a report commissioned by the department summarising the findings of consultations and analysis conducted by the Australian Research Data Commons about research infrastructure relating to humanities, arts and social sciences and Indigenous research. The document contains proposals for future research activities to be funded by the Australian Government. These proposals include projected costings for each proposed activity. These costings were prepared for the Australian Government’s consideration in funding the proposed activities. Accordingly, I am satisfied that the material is deliberative because it constitutes advice and recommendations made to the department. Further, the deliberative material is directly related to the department’s function to create and develop research infrastructure.

I am satisfied the material is not purely factual.

On this basis, I have decided that the relevant information contained in document 1 is exempt under section 47C(1) of the FOI Act.

I have deleted the exempt material and released the remaining material to you in accordance with section 22 of the FOI Act.

Public interest

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.

I consider disclosure of the information would promote the objects of the FOI Act to a small extent. However, I consider this factor is outweighed by the public interest factors against disclosure, indicating that access would be contrary to the public interest. In particular, I consider disclosure could reasonably be expected to impede the department's capacity to effectively and efficiently consider advice obtained from expert third parties in relation to the department's functions and could reasonably be expected to prejudice the department's ability to obtain similar information in the future.

Based on these factors, I have decided that, in this instance, the public interest in disclosing the information in document 1 is outweighed by the public interest against disclosure.

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.

Section 47F of the FOI Act - personal information

I have applied the conditional exemption in section 47F(1) of the FOI Act to 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

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not
- whether the information or opinion is recorded in a material form or not.

Paragraph 6.130 of the FOI Guidelines provides that personal information can include the name of a person. I find that the documents contain personal information of several other people, including their names and details about their employment.

Unreasonable disclosure

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the FOI 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 for the following reasons:

- the information, in the context in which it appears in the documents, is not well-known and not available in full or in part from publicly accessible sources
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act

- the consent of the individuals for the release of their personal information has not been obtained
- the identity of the individuals concerned is readily apparent
- in relation to document 2, I am advised that the individuals listed participated in the consultation process referred to in the document on the condition of anonymity and I am satisfied that releasing their personal information in these circumstances could reasonably be expected to undermine the department's relationships with the individuals and could discourage their cooperation with future consultation processes.

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

Public interest

As noted above, under section 11A(5) of the FOI Act, the department must give you access to the material unless in the circumstances it would be, on balance, contrary to the public interest to do so.

When weighing the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account that disclosure would promote the objects of the FOI Act to a small extent.

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 the right of an individual to privacy
- prejudice the department's ability to obtain similar information in the future, particularly in relation to the information contained in document 2
- adversely affect or harm the interests of an individual or group of individuals.

Based on these factors, I have decided that, in this instance, the public interest in disclosing the information in documents 1 and 2 is outweighed by the public interest against disclosure.

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.

Conclusion

In summary, I am satisfied that the parts of documents 1 and 2 as set out in the Schedule of Documents are conditionally exempt under sections 47C(1) and 47F(1) of the FOI Act.

Furthermore, I have decided that, on balance, it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the documents, in full, to you.

I have deleted the exempt material and released the remaining material to you in accordance with section 22 of the FOI Act.

As noted above, no part of document 2 will be released to you until the affected third party's rights of review have expired.

YOUR RIGHTS OF REVIEW

Asking for a formal review of an FOI decision

If you believe the decision is incorrect, the FOI Act gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

There are no fees for applying for a formal review.

Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the decision maker who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application via email to foi@dese.gov.au.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can lodge your application in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Complaints to the Australian Information Commissioner

Australian Information Commissioner

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

Email: foidr@oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001