



Mr Alex Pentland

FOI reference number: 22-186

Via email: foi+request-8547-06776e02@righttoknow.org.au

Dear Mr Pentland

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 March 2022 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**). You requested the following documents:

I seek access to all documents held by the Department between the dates of 1 January 2019 and 9 March 2019 relating to the Commuter Car Park Upgrade at Hampton Station.

Authority

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 14 documents that fall within the scope of your request. These documents are set out in the below schedule.

Document reference	Date of document	Document description	Decision	Exemption provision/s
1.	N/A	Urban Congestion Fund announcement	Release in part	
2.	N/A	Urban Congestion Fund commuter car park upgrades	Release in part	
3.	N/A	Talking points	Release in part	
4.	N/A	Tackling pinch points will keep us moving	Release in part	
5.	N/A	Secretary's update template	Release in part	S 47F
6.	18 February 2019	Email correspondence	Release in part	S 47F

7.	14 February 2019	Email correspondence	Release in part	S 47F
8.	26 February 2019	Email correspondence	Release in part	S 47F
9.	01 February 2019	Email correspondence	Exempt in full	S 47C
10.	05 February 2019	Email correspondence	Exempt in full	S 47C
11.	15 February 2019	Email correspondence	Release in part	S 47F
12.	08 February 2019	Email correspondence	Release in part	S 47F
13.	05 February 2019	Email correspondence	Release in part	S 47F
14.	03 February 2019	Email correspondence	Exempt in full	S 47C

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 are set out in the above schedule, together with applicable exemption provisions for the documents I have chosen to refuse access to.

I have decided not to impose a charge for processing your FOI request.

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.

Reasons for decision

In accordance with subsection 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 access to the documents follow.

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;
- the following provision of the FOI Act:
 - section 47F – Personal privacy

Statement of reasons

I have decided to grant partial access to the documents within the scope of your request, subject to the following exemption 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 a 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.

Guidelines issued by the OAIC explain 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 (s 47C), which does not include any requirement of harm: the threshold requirement is that the document includes deliberative matter.

Further the OAIC has stated 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.

These documents contain thinking work and options, at times formulated by more junior staff or in connection with Cabinet-in-Confidence processes. If this information were released it could reasonably be expected to provide insight into the internal deliberations of the Department.

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 that the deliberative material does relate to the functions of the Department, specifically the formulation of opinions and decisions regarding the commuter car park upgrade at Hampton Station.

Accordingly, I have decided that the listed documents 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.

Section 47F (Personal privacy)

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

The documents marked as partially exempt under this provision contain personal information, including names and phone numbers of staff below SES level within this Department. This information is not in the public domain and I see no public purpose in disclosing it. I do not consider it appropriate to disclose personal information where it is not otherwise publicly available.

If this information were disclosed and made public there is a reasonable expectation that these details could be subject to misuse, contrary to the wishes of the individuals. I do not consider it appropriate to release the mobile phone numbers of any public service staff and I do not consider this an appropriate or expected use of the information.

Accordingly, I have decided that the parts of the documents which are listed as exempt in accordance with this provision in Schedule 1, 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.

Accordingly, I have decided that the listed documents 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 and may assist to inform debate on a matter of public importance. However, I do not consider that the redacted information would provide oversight of public expenditure. Further, the information does not relate to the personal information of the applicant which is therefore not a relevant consideration on this occasion.

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

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates to 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 Department considers relevant.

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 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.

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.

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.

Contacts

If you wish to discuss this matter, please contact the Department's FOI Coordinator on (02) 6274 6294 or via email at FOI@infrastructure.gov.au.

Yours sincerely



Robert Bradley
Assistant Secretary
Infrastructure Investment Division

7 April 2022

