



JH

Via email: foi+request-9177-71a302e1@righttoknow.org.au

Dear JH

Decision on your Freedom of Information request

I refer to your request, received by the Department of Agriculture, Fisheries and Forestry (**department**) on 26 July 2022 for access under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**) to the following documents:

'Consistent with the Freedom of Information Act 1982, I request the incoming government briefs provided from the Department to its respective Ministers since 21 May 2022.

I am not seeking drafts of the above documents.'

My decision

The department holds two documents (totalling 161 pages) that relate to your request.

I have decided to grant you **part access** to two documents (documents one and two) 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 as:

- they contain material which is subject to legal professional privilege (section 42(1));
- the information is deliberative in nature, the disclosure of which would have a substantial adverse effect and be contrary to the public interest (section 47C(1) conditional exemption);
- the information relates to certain operations of an agency, disclosure of which would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (section 47E(d) conditional exemption); and
- the information is personal information about other people, the disclosure of which would involve the unreasonable disclosure of personal information (section 47F(1)).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision.

How we will send your documents to you

The documents are attached.

You can ask for a review of my decision

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@awe.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.

Further assistance

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

Yours sincerely



Bronwen Jagers
Assistant Secretary
Communication and Media
24 August 2022



LIST OF DOCUMENTS FOR RELEASE

LEX-27796

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-66	June 2022	Incoming Government Brief – Volume 1 Agriculture	Release in part	s 47C(1) s 47F(1)	Pages 9-37, 39-40, 42-59, 61-64: deliberative information deleted under s 47C(1). Pages 39-40, 46, 61-64: personal information exempt under s 47F(1). Pages 2, 4, 8, 38, 60, 65: blank page.
2.	67-161	June 2022	Incoming Government Brief – Volume 2 Agriculture	Release in part	s 42(1) s 47C(1) s 47E(d) s 47F(1)	Page 117-123: material subject to legal professional privilege deleted under s 42(1). Pages 88, 112-113: deliberative information deleted under s 47C(1). Page 95, 98, 100-104: information in relation to certain operations of agencies under s 47E(d). Pages 80-84, 92, 96-97, 120-123, 130-132, 134-135, 137-139, 141-142, 144, 149-156: personal information exempt under s 47F(1). Pages 68, 72, 94, 148, 158, 160: blank page.

REASONS FOR DECISION

What you requested

Request dated 26 July 2022:

“Consistent with the Freedom of Information Act 1982, I request the incoming government briefs provided from the Department to its respective Ministers since 21 May 2022.

I am not seeking drafts of the above documents.’

On 29 July 2022 the department acknowledged your request and advised you that we would not include personal details about our staff.

On 29 July 2022, in response to the departments acknowledgement letter you provided the following response:

‘Thank you for your confirmation, I have no issues with the conditions you’ve outlined below:

- information released under FOI Act may be published in a disclosure log on the department's website, and
- employees have choice about whether they provide their full name and direct contact details in response to public enquiries and that these details are out of scope of your request and they will be redacted under section 22 of the FOI Act.

However, I request that all SES level staff do not have their names redacted.

I also confirm that this is the appropriate email to send correspondence.’

On 1 August 2022 the department contacted you to advise you of the following:

‘...On 28 July 2022, the Department made a decision on a similar request and documents released for that FOI request have now been published on the Departments disclosure log – see LEX 27324.

Based on this information, we would appreciate if you could confirm that this has satisfied your request, and that you are happy to withdraw your FOI request as soon as possible, but otherwise by COB 3 August 2022.’

On 1 August 2022, your responded with the following:

‘Thank you for your reply. I would like to confirm that I would still like to have my application processed under the terms I have submitted.

I would also like to have an assurance that the decision maker allocated this application will make a decision independent to the document and decision you provided me (LEX 27324), particularly with reference to matters the Department believes is exempt under Division 3 of the Act.

I expect to be provided detailed explanation for redactions made using these exemptions and how they meet a public interest test.’

What I took into account

In reaching my decision, I took into account:

- your request dated 26 July 2022;
- other correspondence with you on 29 July 2022, and 1 August 2022;
- the documents that fall within the scope of your request;
- information about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- 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 documents that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to those documents are discussed below.

Section 47C of the FOI Act – Deliberative processes

I have applied the conditional exemption in section 47C to parts of documents 1-2.

Section 47C of the FOI Act provides:

'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; or

(b) a Minister; or

(c) the Government of the Commonwealth.

Paragraph 6.58 of the Guidelines relevantly provides:

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 bearing upon one's course of action. In short, deliberative processes involved in the functions of an agency are thinking processes – the processes of reflection, for

example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Parts of documents one and two contain evaluations of the department provided to the incoming minister relating to portfolio issues, budget assessments, upcoming decisions and election commitment implementations plans. These are the departments thinking processes provided to the incoming Minister for introduction and for their consideration and are deliberative in nature.

You will note that parts of the documents have large amounts of section 47C(1) exemptions applied to them. This is because the factual material is so intertwined with the deliberative material that it was impractical to separate them. Paragraph 6.73 of the Guidelines provides that the 'purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it. Furthermore, paragraph 3.98 of the Guidelines provides that 'the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.'

On this basis, I am satisfied that the above mentioned documents contains deliberative matter for the purposes of section 47C(1) of the FOI Act. I am further satisfied that the documents are conditionally exempt under section 47C(1) of the FOI Act.

Public interest considerations

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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and inform debate on a matter of public importance.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. I have considered the extent to which disclosure could reasonably be expected to prejudice the department's ability to provide information to an incoming minister over unsettled matters and make suggestions relating to different aspects of the department.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the documents would, on balance, be contrary to the public interest.

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 the document, as set out in the Schedule, are conditionally exempt under section 47C(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.

As identified in the Schedule, I have deleted the exempt information in the documents and released the remaining material in accordance with section 22(1) of the FOI Act.

Section 47E(d) of the FOI Act – certain operations of agencies

I have applied the conditional exemption in section 47E(d) to parts of document 2.

Section 47E(d) of the FOI Act relevantly provides:

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

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.123 of the Guidelines provides, in relation to section 47E(d) of the FOI Act, that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

Part of document two contains contact details and email addresses provided to the Minister and the office in order to allow them to directly contact the department via set numbers and a positional mailbox. I am satisfied that the material in the documents relates to the department's functions in providing direct support to the Minister and the Minister's Office. I consider that the disclosure of this information would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the department in providing support to the Minister and the Minister's Office, if these contact details were made available to the public, as the public could use these to contact the department which would reduce the department's ability to provide support to the Minister and the Minister's office. On this basis, I have decided that parts of the information included in document 2 is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations

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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act.

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 department's ability to perform its functions of providing support to the Minister and Minister's Office using contact details specific to them.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the documents would, on balance, be contrary to the public interest.

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 as set out in the Schedule, are conditionally exempt under section 47E(d) 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.

As identified in the Schedule, I have deleted the exempt information in the document and released the remaining material in accordance with section 22(1) of the FOI Act.

Section 42 of the FOI Act – documents subject to legal professional privilege

I have applied the exemption in section 42 to parts of document two.

Section 42 of the FOI Act provides that:

'(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the grounds of legal professional privilege.'

Legal professional privilege is not defined in the FOI Act for the purposes of the exemption. To determine the application of section 42 of the FOI Act, consideration must be given to the common law concept of legal professional privilege. At common law, determining whether a communication is privileged requires consideration of:

- whether there is a legal adviser-client relationship;
- whether the communication was for the purposes of giving or receiving legal advice, or use in the connection with actual or anticipated litigation;
- whether the advice given is independent; and
- whether the advice given is confidential.

The document contains information provided on a legal adviser-client relationship basis, is independent legal advice and given confidentially. The information contained in the document is in connection with and relates to a number of actual current litigation matters.

For the reasons set out above, I am satisfied that the material is exempt under section 42 of the FOI Act.

I have deleted the exempt material and released the remaining material in accordance with section 22(1) of the FOI Act.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to parts of documents 1-2.

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

The term 'personal information' is defined as follows:

'...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 a material form or not.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

I find that parts of documents one and two contain personal information of other people. This includes mobile numbers of SES staff, some of which are included in QR codes.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the 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 as it relates to aspects of an individual's personal affairs and the information is private and not available in full or in part from publicly-accessible sources;

On this basis, I have decided that the personal information included in documents one and two are conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure of SES phone numbers would promote the objects of the FOI Act.

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 an individual's right to privacy.

Based on the above factors, I have decided that in this instance, the disclosure of the documents would, on balance, be contrary to the public interest.

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 parts of documents, as set out in the Schedule, are conditionally exempt under section 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.

As identified in the Schedule, I have deleted the exempt information in the documents and released the remaining material in accordance with section 22(1) of the FOI Act.

Summary of my decision

In conclusion, I have decided to grant you part access to two documents.

I have decided that:

- documents one and two are conditionally exempt, in part, under section 47C(1) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5); and
- document two, is exempt in part, under section 47E(d) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5); and
- document two is exempt, in part, under section 42(1) of the FOI Act.
- documents one and two are conditionally exempt, in part, under section 47F(1) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).