



## Australian Government

### Department of Finance

Reference: FOI15/15  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Ms Evelyn Doyle  
Right to Know

**via email:** [foi+request-920-bdb2a39a@righttoknow.org.au](mailto:foi+request-920-bdb2a39a@righttoknow.org.au)

Dear Ms Doyle

#### **Freedom of Information Request – FOI15/15**

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

*I seek, under the FOI Act, a copy of the National Action Plan for the Open Government Partnership (OGP) which was due for completion in December 2014. This document was referred to by Secretary Halton at Senates Estimates Hearing in October 2014 as follows:*

In an email, dated 11 February 2015, you added the following component to your request:

*Could I also request the most recent ministerial brief on the OGP.*

The statutory period for processing your request commences from the day after Finance received your request. You agreed, on 11 February 2015, that your request included the National Action Plan for the Open Government Partnership and the most recent ministerial brief on the OGP and that this request superseded your original request. As such, your request was considered to be received by Finance on 11 February 2015.

#### **Authorised decision-maker**

I am authorised by the Secretary under subsection 23(1) of the FOI Act to grant or deny access to documents under the FOI Act.

## Decision

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (OAIC Guidelines).

I have decided to:

- a) exempt one document in full under section 47C (Deliberative Process); and
- b) release one document in part with material exempt under:
  - Section 34 – Cabinet documents;
  - Section 47C – Deliberative process; and
  - Section 47E – Certain operations of agencies.

The reasons for my decision are set out at Attachment A. The documents that I have identified as within the scope of your request are identified in the schedule at Attachment B.

## Section 22 – Access to copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act allows for the deletion of exempt or irrelevant matter from a document that may allow for an edited form of the document to be released. I have decided that edited copies of certain documents can be released to you under this category. Accordingly, I have decided to provide you with one document with the exempt information redacted. The document is identified in the Schedule at Attachment B.

## Charges

On 16 March 2015, Finance sent you an affirmed estimate of charges (\$17.15) in relation to the processing of your request.

On 18 March 2015, Finance received payment of the charges in full.

After reviewing the estimate of charges, provided to you on 16 March 2015, I can confirm that this represents the actual costs incurred to process your FOI request. As a result, there will be no change to the charge.

## Review and appeal rights

You are entitled to request an internal review or a review by the OAIC of my decision. The process for review and appeal rights is set out at Attachment C.

## Publication

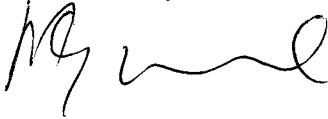
The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act and
- information in documents release under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log ([www.finance.gov.au](http://www.finance.gov.au)) as soon as possible. Finance's policy is to publish the documents within one working day after they are released to you.

If you have any questions in regards to this request, please contact the FOI Team on the above contact details.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MG' followed by a stylized flourish.

Marcel Gabriel  
Acting Assistant Secretary  
Online Services Branch  
Department of Finance

25 March 2015

## Draft National Action Plan (Document 1)

### Section 47C – Deliberative Processes

Section 47C of the FOI Act prescribes that:

*(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; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth; or*
- (d) the Government of Norfolk Island.*

The OAIC Guidelines further expand on this provision by stating:

*6.56 A document may be conditionally exempt if it includes deliberative matter. Deliberative matter is content that is in the nature of, or relating to either:*

- an opinion, advice or recommendation that has been obtained, prepared or recorded*
- a consultation or deliberation that has taken place*
- in the course of, or for the purposes of, a deliberative process of the agency or minister (s 47C(1)).*

*6.62 A deliberative process involves the exercise of judgement in developing and making a selection from different options*

#### *Deliberative matter*

I am satisfied that document 1, identified in the Schedule, contains matter that is deliberative under section 47C of the FOI Act and is therefore conditionally exempt. The document is a draft plan that has been prepared or recorded or has taken place in the course of, or for the purposes of, the deliberative processes involved in the functions of Finance.

In particular, the document is a draft National Action Plan for the Open Government Partnership (OGP). The Australian Government is still considering whether to join the OGP. As such, I consider the document contains information that is deliberative in nature.

This document does not include operational information or purely factual material. I am also satisfied that the document identified in the Schedule does not include reports of a scientific or technical expert.

#### *Public Interest Test*

Having formed the view that the document contains deliberative matter, I am now required to consider the public interest test for the purposes of working out whether access to the conditionally exempt document would, on balance, be contrary to the public interest.

I have considered the following factors favouring disclosure as prescribed by subsection 11B(3) of the FOI Act.

- *Release of the document would promote the objects of the Act:* I note that the release of the documents would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible. The release of the documents would provide greater opportunity for the Australian public to participate in government processes and to comment on matters and activities undertaken by the Australian Government, specifically in relation to Australia's involvement with the OGP. The release of document would not significantly add to that access and opportunity and/or could reasonably be expected to do harm to the Commonwealth.
- *Release of the document would inform debate on a matter of public importance:* I have taken into account the general interest of the Australian community about the matter discussed in the document. Again, release of the document would not significantly add to the information already provided and/or could reasonably be expected to do harm to the Commonwealth.

I have also considered the following factors against disclosure of the document:

- *Disclosure would reasonably be expected to affect the 'frankness and candour' of similar future documents of the Agency:* The Australian Government places strong reliance on receiving frank and candid advice from the department, including any proposed draft National Action Plans. On this basis I consider that the disclosure of the document could reasonably be expected to affect the frankness and candour of written advice received from the department if there was an expectation that such material would be publicly released. I place considerable weight on this factor against disclosure of the documents.

I have not considered the irrelevant factors, which are mentioned in section 11B(4) of the FOI Act.

Taking into account the matters listed above, I have determined that the factors against disclosure outweigh the factors in favour of disclosure of document 1. Accordingly, I have determined that document 1 is exempt, in full, under section 47C of the FOI Act.

## Ministerial Brief (Document 2)

### Section 34 – Cabinet Documents

Section 34 of the FOI Act states that:

- 34(1) *A document is an exempt document if:*
- (a) both of the following are satisfied:*
    - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
    - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
  - (b) it is an official record of the Cabinet; or*
  - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
  - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.*
- (2) *A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.*
- (3) *A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

In accordance with the procedural requirements for documents prepared for the Cabinet or its committees, Finance has sought advice on document 2 from the Department of the Prime Minister and Cabinet (PM&C). Following advice from PM&C, I have decided that document 2 contains exempt information that would reveal Cabinet deliberations and decisions. I am not aware that any of the deliberations and decisions discussed in the document has been officially disclosed. Accordingly, I have decided that the information identified in document 2 is exempt on the basis of section 34(3) of the FOI Act.

Under section 22 of the FOI Act, I have decided that the document can be released to you in part, with the relevant exempt material redacted under section 34(3) of the FOI Act.

### Section 47C – Deliberative Processes

Section 47C of the FOI Act prescribes that:

- (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; or*
  - (b) a Minister; or*
  - (c) the Government of the Commonwealth; or*
  - (d) the Government of Norfolk Island.*

The OAIC Guidelines further expand on this provision by stating:

*6.56 A document may be conditionally exempt if it includes deliberative matter.*

*Deliberative matter is content that is in the nature of, or relating to either:*

- *an opinion, advice or recommendation that has been obtained, prepared or recorded*
- *a consultation or deliberation that has taken place*
- *in the course of, or for the purposes of, a deliberative process of the agency or minister (s 47C(1)).*

*6.62 A deliberative process involves the exercise of judgement in developing and making a selection from different options*

#### *Deliberative matter*

I am satisfied that document 2 contains matter that is deliberative under section 47C of the FOI Act and are therefore conditionally exempt. The document contains advice provided to the Finance Minister, in confidence, in relation to a matter that is not yet determined. As such, I consider the document contains information that is deliberative in nature.

This document does not include operational information or purely factual material. Such information and material has not been redacted from the documents. I am also satisfied that the document identified in the Schedule does not include reports of a scientific or technical expert.

#### *Public Interest Test*

Having formed the view that document 2 contains deliberative matter, I am now required to consider the public interest test for the purposes of working out whether access to a conditionally exempt document (or the parts redacted under section 47C) would, on balance, be contrary to the public interest.

I have considered the following factors favouring disclosure as prescribed by subsection 11B(3) of the FOI Act.

- *Release of the document would promote the objects of the Act:* I note that the release of the document would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible. The release of the document would provide greater opportunity for the Australian public to participate in government processes and to comment on matters and activities undertaken by the Australian Government, specifically in relation to Australia's involvement with the OGP. The release of redacted information would not significantly add to that access and opportunity and/or could reasonably be expected to do harm to the Commonwealth.
- *Release of the document would inform debate on a matter of public importance:* I have taken into account the general interest of the Australian community about the matter discussed in the document. Again, release of the redacted information would not significantly add to the information already provided and/or could reasonably be expected to do harm to the Commonwealth.

I have also considered the following factors against disclosure of the document:

- *Disclosure could reasonably be expected to prejudice the activities of the Commonwealth agency:* I consider that the release of the redacted information could reasonably be expected to have a substantial adverse effect on the activities of the agency. In particular, the information was advice provided to the Finance Minister in confidence. There is a reasonable expectation of confidentiality and disclosure could result in a loss of confidence in Finance's ability to keep confidential information confidential and obtain similar information in the future. This would undermine Finance's ability to support government processes in the future.

I have not considered the irrelevant factors, which are mentioned in section 11B(4) of the FOI Act.

Taking into account the matters listed above, I have determined that the factors against disclosure outweigh the factors in favour of disclosure in regard to document 2. Accordingly, I have determined that the identified parts of document 2 are exempt under section 47C of the FOI Act.

### **Section 47E – Release of document have a substantial adverse effect on an Agency's Operations**

Section 47E of the FOI Act states that:

*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 of 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.*

Under section 11A of the FOI Act, access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

The redacted information relates to the dates and times of Cabinet meetings, which is confidential. There is a reasonable expectation to maintain Cabinet confidentiality and the release of this information would undermine Finance's ability to support Cabinet in its deliberations in the future. This would have a substantial adverse effect on the proper and efficient conduct of the operation of Finance.

On this basis, I have decided that the redacted information that has been identified in document 2 is conditionally exempt under section 47E of the FOI Act. Having formed the view that the document is conditionally exempt in part, under section 47E of the FOI Act, I am required to consider whether disclosure of those parts would be contrary to the public interest.

Under section 11B(3) of the FOI Act, I have considered the following factors favouring disclosure of the document:



- *Release of the documents would promote the objects of the Act:* I note that release of this information would give the Australian community access to information held by the Commonwealth that would not otherwise be readily accessible. However, I do not consider that the release of this information would contribute to the other objectives of the FOI Act, and as such place little weight on this factor.
- *Inform Debate on a Matter of Public Importance:* I consider that release of the redacted information would provide limited contribution to informing debate on a public matter.

I have also considered the following factors against disclosure of the document:

- *Disclosure could reasonably be expected to prejudice the activities of the Commonwealth agency:* I consider that the release of the redacted information could reasonably be expected to have a substantial adverse effect on the activities of the agency. In particular, there is a reasonable expectation that Finance will maintain Cabinet confidentiality and the release of this information would undermine Finance's ability to support Cabinet in its deliberations in the future which would have an adverse effect on the operations of Finance.

I have not considered the irrelevant factors, prescribed in section 11B(4) of the FOI Act.

Taking into account the matters listed above against, I have determined that on balance, the factors against disclosure outweigh the factors in favour of disclosure. Accordingly, I have decided that the identified information that has been redacted in document 2 is exempt under section 47E of the FOI Act.

# ATTACHMENT B

## SCHEDULE OF DOCUMENTS RELEVANT TO FOI REQUEST No. 15/15

Document No.	Date of Document	No. of Pages	Author	Addressee	Description of Document	Decision
1	N/A	N/A	N/A	N/A	Draft National Action Plan	Exempt in full (s.47C – Deliberative)
2	17/10/2014	3	Yvette Sims	Minister for Finance	Ministerial Brief	Release in Part with material exempt under s.34(3) – Cabinet, s.47C – Deliberative and s.47E – agency operation.



## Australian Government

### Department of Finance

## Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

### Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

### *How to apply for internal review*

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this attachment.

### Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

### *Do I have to go through Finance's internal review process first?*

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

### *Do I have to pay?*

No. Review by the IC is currently free.

### ***How do I apply?***

You must apply for IC review in writing and you can lodge your application in one of the following ways:

**Post:** Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**Fax:** 02 9284 9666  
**In person:** Level 3  
175 Pitt Street  
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website ([www.oaic.gov.au](http://www.oaic.gov.au)). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

### ***Making a complaint***

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review.

### ***When can I go to the Administrative Appeals Tribunal (AAT)?***

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$861, although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

### ***Investigation by the Ombudsman***

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same

matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

**Post:** Commonwealth Ombudsman  
PO Box 442  
CANBERRA ACT 2601  
**Phone:** 02 6276 0111  
1300 362 072

### ***Finance FOI contact details***

FOI Coordinator  
Legal Services Branch  
Department of Finance  
John Gorton Building  
King Edward Terrace  
PARKES ACT 2600  
**Phone:** 02 6215 1783  
**Email:** [foi@finance.gov.au](mailto:foi@finance.gov.au)  
**Website:** [www.finance.gov.au/foi/foi.html](http://www.finance.gov.au/foi/foi.html)