



21 December 2022
FOI ref: 3226

Dale Webster
By email: foi+request-9646-c0a2ddf3@righttoknow.org.au

Dear Ms Webster

FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 3 December 2022 for access, under the *Freedom of Information Act 1982 (FOI Act)*, to the following:

a copy of the draft Regional Banking Taskforce report as it stood at the change of government in May 2022. I understand you would not normally release draft copies of reports but as this taskforce spanned two governments I believe it is in the public interest to release the document.

I am an authorised decision maker under section 23 of the FOI Act.

Decision

The Treasury has identified one document within the scope of your request. I have decided to refuse access to this document in full.

Further information regarding my decision is set out below.

Material Considered

The material to which I have had regard in making this decision includes:

- the scope of the FOI request;
- the content of the document subject to your request;
- the relevant provisions in the FOI Act;
- advice from subject matter experts within the Treasury;
- third party responses to third party consultation; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Reasons for decision

Section 47E – Certain Operations of Agencies

Section 47E(d) of the FOI Act provides that a document is conditionally exempt where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The relevant document is an early draft version of the Regional Banking Taskforce report. One of Treasury's main roles is to provide sound analysis and authoritative policy advice on significant issues affecting the economy. The material in the document canvasses the Taskforce's preliminary, incomplete and untested considerations and recommendations. Disclosure of the deliberative material contained in the draft report would impede Treasury's ability to provide confidential and complete advice and recommendations to the Minister and to other Government agencies, and to seek such information from other agencies and stakeholders in turn.

I find that the disclosure of this document would likely result in future material of this nature not carrying the level of detail necessary to support the complete and unqualified departmental economic analysis and policy advice needed to underpin evidence-based decision making.

I consider that this prejudice to one of the Treasury's core advisory functions resulting from disclosure would have a substantial adverse effect on the Treasury's confidential processes. Accordingly, I find the document to be conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Public Interest Test

Section 11A(5) provides that an agency must give a person access to a conditionally exempt document unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

To determine whether access to the conditionally exempt personal information would be contrary to the public interest, I must weigh the public interest factors favouring access to the personal information against the public interest factors against access. The FOI Guidelines provide examples of factors in favour of, and against, releasing conditionally exempt material. I have not taken into account any of the prohibited matters set out in section 11B(4) of the FOI Act.

In favour of access, I find that disclosure of the conditionally exempt material would promote the objects of the FOI Act and increase scrutiny of Government activities.

Against disclosure, I have considered the public interest in protecting Treasury's confidential deliberative processes of providing advice and recommendations on matters of significance and sensitivity as one of the Treasury's core advisory functions. If the draft report was to be released under FOI, it could reasonably be expected that future collaborative taskforces would be undermined by the public expectation of the premature release of deliberative material. I find that this adverse impact would be contrary to the public interest in the proper and efficient development of new policy initiatives through taskforce and stakeholder consultation. I have also considered the public interest in agencies' advice to decision-makers being supported by fully considered and tested evidence to assist effective and informed decision-making.

I have also considered that, while there is public interest in the material contained within the draft report, this public interest was sufficiently served by the publication of the final version of the Regional Banking Taskforce report on 30 September 2022 available at the following link:
<https://treasury.gov.au/publication/p2022-260600>

On balance, I consider the public interest factors against disclosure outweigh the factors in favour of disclosure. I have therefore decided to refuse access to the draft report under section 47E(d) of the FOI Act.

Rights of Review

A statement setting out your rights of review in this matter is attached.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Nghi Luu', written in a cursive style.

Nghi Luu
Assistant Secretary
Capital Markets, Payments and Financial Innovation Branch

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to FOI@Treasury.gov.au.

OR

2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the 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 Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.